

115TH CONGRESS }  
2d Session

SENATE

{ REPORT  
115-266

TSA MODERNIZATION ACT

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1872



JUNE 6, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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## Calendar No. 444

115TH CONGRESS }  
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115-266 }

### TSA MODERNIZATION ACT

JUNE 6, 2018.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 1872]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1872) to authorize the programs of the Transportation Security Administration relating to transportation security, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 1872, the TSA Modernization Act, is to authorize the programs of the Transportation Security Administration (TSA) relating to transportation security, and for other purposes.

#### BACKGROUND AND NEEDS

The TSA was established by the Aviation and Transportation Security Act in response to the September 11, 2001, attacks in order to strengthen the security of the Nation's transportation systems and ensure the freedom of movement for people and commerce.<sup>1</sup> The TSA is tasked with protecting aviation, rail, mass transit, highway, and pipeline sectors from terrorist attacks. The TSA employs over 50,000 full-time equivalent individuals,<sup>2</sup> and TSA offi-

<sup>1</sup>P.L. 107-71, 115 Stat. 597.

<sup>2</sup>U.S. Department of Homeland Security (DHS), "FY 2016 Budget in Brief." ([http://www.dhs.gov/sites/default/files/publications/FY\\_2016\\_DHS\\_Budget\\_in\\_Brief.pdf](http://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf))

cers screened 738 million airline passengers, 466 million checked bags, and 24.2 million airport employees in 2016.<sup>3</sup>

The TSA faces a number of current challenges and threats to the aviation environment. According to the Department of Homeland Security (DHS), evaluated intelligence indicates that terrorist groups continue to target commercial aviation and are aggressively pursuing innovative methods to undertake their attacks, including smuggling explosive devices in consumer items.<sup>4</sup> The November 9, 2017, DHS National Terrorism Advisory System Bulletin noted that terrorists continue to target commercial aviation and air cargo, including with concealed explosives.<sup>5</sup> One of the TSA's leading threat concerns relates to identifying explosives disguised in certain personal electronic devices (PEDs). These threats demonstrate the need to more quickly deploy newly advanced technologies to address vulnerabilities. However, the TSA has historically undertaken a lengthy process to test, evaluate, procure, and deploy new security technologies.

Another area of interest and need is the procurement and use of explosive detection canine teams. The Government Accountability Office (GAO), the DHS Inspector General, and other independent testers have proven canine teams to be one of the most effective means of detecting explosive substances. However, critics complain that the TSA is not able to deploy enough passenger screening canines due to a limited supply, the lengthy training process, and the limited number of training locations.

Recent public area security incidents also have focused attention on the challenges of securing the public areas of airports not subject to checkpoint screening. Such events include a shooting, in January 2017, in the baggage claim area at Fort Lauderdale Hollywood International Airport; and a bombing, in March 2016, in the public terminal area of the Brussels, Belgium airport, and at a nearby metro station.

The bill addresses challenges related to the following: airport public area security; canine deployment; last point of departure (LPD) airports; acquisition and deployment of innovative screening technologies and checkpoint designs; PreCheck Program expansion; and air traveler delays. The bill was developed based on testimony from ongoing Committee oversight on security issues, including a February 2017 hearing of the Subcommittee on Aviation Operations, Safety, and Security regarding TSA stakeholder perspectives, as well as the recommendations of other aviation stakeholders and oversight of the TSA's implementation of the aviation security provisions in the FAA Extension, Safety, and Security Act of 2016 (FESSA),<sup>6</sup> among other things.

<sup>3</sup> Administrator of the Transportation Security Administration, "TSA Year in Review," January 12, 2017. (<http://tsa.gov/blog/2017/01/12/tsa-year-review-record-amount-firearms-discovered-2016>)

<sup>4</sup> DHS, "Fact Sheet: Aviation Security Enhancements for Select Last Point of Departure Airports with Commercial Flights to the United States" (updated July 21, 2017). (<https://www.dhs.gov/news/2017/03/21/fact-sheet-aviation-security-enhancements-select-last-point-departure-airports>)

<sup>5</sup> DHS, "National Terrorism Advisory System Bulletin," (reissued November 9, 2017). ([https://www.dhs.gov/sites/default/files/ntas/alerts/17\\_1109\\_NTAS\\_Bulletin.pdf](https://www.dhs.gov/sites/default/files/ntas/alerts/17_1109_NTAS_Bulletin.pdf))

<sup>6</sup> P.L. 114-90, 130 Stat. 615.

## SUMMARY OF PROVISIONS

The bill would focus on the following thematic areas: reforming agency organizational structure; advancing security technologies; addressing public area security; improving passenger and cargo security; updating foreign airport security regulatory processes; improving cockpit and cabin security; and making technical amendments to title 49 of the United States Code.

Specifically, the bill would do the following:

- *5-year term.* The bill would ensure stability and consistent leadership at the TSA by establishing a 5-year term for the TSA Administrator (appointed by the President and confirmed by the Senate), similar to the Federal Aviation Administration (FAA), and making the Deputy Administrator appointed by the President (but not subject to Senate confirmation).
- *Third party testing and evaluation.* The bill would instruct the TSA to establish a program to authorize third party testing and evaluation of security screening equipment as an alternative to the TSA's current testing processes to speed up deployment of the latest security technologies.
- *PreCheck Program.* The bill would build upon oversight of the PreCheck Program improvements enacted in FESSA by requiring the TSA to partner with at least two private sector companies to market and to increase enrollment opportunities for the program (e.g., mobile or by means other than biometrics that are evaluated and certified, or determined to be as effective as a fingerprint-based criminal history record checks) in order to vet and facilitate faster travel for more of the flying public.
- *Third party canines.* The bill would require the TSA to develop standards that allow for use of third party explosives detection canines for the screening of passengers, property, and air cargo in order to increase the supply and deployment of canines at airports.
- *LPD airports.* The bill would require the TSA to consult and notify specific aviation stakeholders prior to making changes to security standards for LPD airports to improve implementation of the TSA's new security procedures.
- *Law Enforcement Officer (LEO) Reimbursement Program.* The bill would promote greater security and law enforcement presence at airports by increasing the amount and number of awards via a \$10 million increase in authorization of appropriations for the LEO Reimbursement Program, which many airports use to deploy police officers.
- *Passenger security fee.* The bill would ensure money collected from the passenger security fee is credited as offsetting collections to appropriations for TSA aviation security measures starting in 2025 when the diversion of such fees for other purposes expires.
- *Screening Partnership Program (SPP) updates.* The bill would expand opportunities to use the SPP, which allows airports, at their discretion, to employ private security contractors instead of TSA employees by authorizing individual operators of airport terminals and airport security checkpoints to also participate in the program. Under current law, applications

submitted under the program apply to all screening operations at an airport seeking to participate.

- *Real-time wait times.* The bill would improve the traveler experience by requiring the TSA to make available to the public, online and at airport terminals, information on wait times at each airport security checkpoint.
- *Innovation Task Force (ITF).* The bill would foster innovation in aviation security by building on existing TSA efforts to establish a government-industry task force to focus on identifying, developing, and accelerating the growth of aviation security technology and innovations.
- *Public area best practices.* The bill would facilitate improved information sharing between the TSA and aviation stakeholders on public area security threats and best practices relating to protecting aviation infrastructure.
- *Biometrics expansion.* The bill would direct the TSA, in coordination with U.S. Customs and Border Protection (CBP), to assess the operational and security impact of using biometric technology to identify passengers, and to facilitate the deployment of biometric technology at checkpoints and screening lanes.
- *Conforming and miscellaneous amendments.* The bill would conform existing law to current TSA operations, including updating relevant references to reflect the current placement of the TSA under the DHS, and the current title of the TSA Administrator.

#### LEGISLATIVE HISTORY

S. 1872 was introduced by Senator Thune (for himself and Senators Nelson, Blunt, and Cantwell) on September 27, 2017, and was referred to the Committee on Commerce, Science, and Transportation of the Senate.

The Committee held briefings and hearings examining key issues that are addressed in the legislation, including the following: a classified threat briefing;<sup>7</sup> “Stakeholder Perspectives on Improving TSA for the Security of the Traveling Public”;<sup>8</sup> and “TSA Modernization: Improvements to Aviation Security.”<sup>9</sup>

On October 4, 2017, the Committee, by voice vote, ordered S. 1872 reported favorably, with an amendment (in the nature of a substitute). The adopted amendments were as follows:

- An amendment from Senators Thune and Blunt to make improvements to the Federal Flight Deck Officer (FFDO) Program.
- An amendment from Senators Thune, Nelson, Blunt, and Cantwell to make improvements for the screening of disabled passengers.

<sup>7</sup>U.S. Congress, Senate Committee on Commerce, Science, and Transportation, closed Committee hearing, 115th Cong., 1st sess., February 7, 2017.

<sup>8</sup>U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Stakeholder Perspectives on Improving TSA for the Security of the Traveling Public*, 115th Cong., 1st sess., February 16, 2017.

<sup>9</sup>U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *TSA Modernization: Improvements to Aviation Security*, 115th Cong., 1st sess., September 28, 2017.

- An amendment from Senator Gardner to establish performance metrics and objectives for testing and verification of security technologies.
- An amendment from Senator Inhofe to include institutions of higher education in third party canine activities.
- An amendment from Senator Markey to conduct a pilot program to test the use of computed tomography technology.
- An amendment from Senator Schatz to conduct a privacy assessment of expanding the use of biometric data.

Similar legislation, S. 763, the Surface and Maritime Transportation Security Act, was introduced by Senator Thune (for himself and Senators Nelson, Fischer, and Booker) on March 29, 2017, to improve surface and maritime transportation security. On April 5, 2017, the Committee met in open Executive Session and ordered S. 763 reported favorably with an amendment (in the nature of a substitute).

Chairman of the Committee on Homeland Security of the House of Representatives, Representative Michael McCaul, introduced H.R. 2825, the Department of Homeland Security Authorization Act, which is a bill to amend the Department of Homeland Security Act of 2002 (Act of 2002) to make certain improvements in the laws administered by the Secretary of DHS (Secretary), and for other purposes, on June 8, 2017. H.R. 2825 contains a title related to the authorization of the TSA, since the TSA is a component of the DHS. That bill was referred to the Committee on Homeland Security, which, on June 14, 2017, ordered it reported by voice vote. On July 20, 2017, the House of Representatives passed H.R. 2825 by a vote of 386–41.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

##### *S. 1872—TSA Modernization Act*

Summary: S. 1872 would authorize gross appropriations totaling \$24 billion over the 2018–2020 period for activities of the Transportation Security Administration (TSA), which is responsible for the security of all modes of public transportation in the United States. Assuming appropriation of the authorized amounts as well as collections of certain fees that would offset a portion of the agency's costs, CBO estimates that implementing S. 1872 would, on net, cost \$16.2 billion over the 2018–2022 period.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1872 would not increase net direct spending or on-budget deficit in any of the four consecutive 10-year periods beginning in 2028.

S. 1872 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1872 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2018	2019	2020	2021	2022	2018–2022
INCREASES OR DECREASES (–) IN SPENDING SUBJECT TO APPROPRIATION						
Gross TSA Spending:						
Authorization Level .....	7,957	7,996	8,035	0	0	23,988
Estimated Outlays .....	5,968	7,588	7,864	2,006	401	23,827
Aviation Security Fees:						
Estimated Authorization Level .....	–2,470	–2,550	–2,630	0	0	–7,650
Estimated Outlays .....	–2,470	–2,550	–2,630	0	0	–7,650
Total Changes:						
Estimated Authorization Level .....	5,487	5,446	5,405	0	0	16,338
Estimated Outlays .....	3,498	5,038	5,234	2,006	401	16,177

Basis of estimate: For this estimate, CBO assumes that S. 1872 will be enacted early in fiscal year 2018 and that authorized amounts will be provided near the start of each year.

S. 1872 would authorize gross appropriations totaling nearly \$8 billion in 2018 and \$24 billion over the 2018–2022 period for certain activities of the TSA. (By comparison, on an annualized basis, TSA received about \$7 billion for those activities in 2018 under the Continuing Appropriations Act, 2018, and Supplemental Appropriations for Disaster Relief Requirements Act, 2017.) That three-year total includes:

- \$23.5 billion for TSA’s operating and maintenance expenses, including salaries and benefits for most of the agency’s workforce;
- \$276 million for technologies and activities related to monitoring “exit lanes” used by passengers to exit secure areas of airports; and
- \$165 million to reimburse costs incurred by public entities to deploy additional law enforcement officers at airports.

On the basis of historical spending patterns for TSA programs, CBO estimates that gross outlays under S. 1872 would total nearly \$6 billion in 2018 and \$24 billion over the 2018–2022 period.

Because TSA is authorized to collect fees to offset a portion of gross funding provided for aviation security programs, CBO also estimates that implementing S. 1872 would increase offsetting collections. Specifically, under current law, commercial airlines charge passengers a fee of \$5.60 per one-way trip in air transportation that originates at an airport in the U.S., subject to an overall cap of \$11.20 per round trip; those fees are remitted to the federal government. Based on an analysis of information from TSA and other federal agencies about anticipated volume of commercial airline passengers and travel patterns, CBO estimates that such fees would total nearly \$7.7 billion over the 2018–2022 period, thus reducing the net appropriations that would be necessary to implement the legislation. Accordingly, CBO estimates that S. 1872 would, on net, authorize appropriations totaling \$16.3 billion over the 2018–2022 period and that resulting net outlays would total \$16.2 billion.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 1872 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Estimated impact on public and private entities: S. 1872 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimated prepared by: Federal costs: Megan Carroll; Intergovernmental and private-sector impact: Jon Sperl.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### NUMBER OF PERSONS COVERED

S. 1872 would affect millions of air travelers, pilots, and crew who fly within and to the United States, as well as those air carriers and airports that facilitate flights within and to the United States. These individuals are already subject to TSA regulations and the bill would not subject additional groups or classes to new mandates. Specific provisions within S. 1872 would seek to reduce the regulatory and administrative burdens on certain groups, including operators of airports, terminals, or checkpoints that opt to participate in the Screening Partnership Program, disabled passengers, passengers who are seeking expedited screening, and pilots interested in participating in the FFDO Program.

##### ECONOMIC IMPACT

S. 1872 is intended to positively impact the travel industry by better facilitating the flow of commerce and the traveling public through the security screening process at airports. It would save passengers time and, thus, money by providing them with more options to take advantage of expedited security screening, improved screening technologies, and information about checkpoint wait times in real time. The bill also would improve coordination regarding new security directives and emergency amendments with air carriers operating flights from LPD airports so that such measures are better harmonized with carrier operations.

##### PRIVACY

S. 1872 would have a minimal impact on the personal privacy of U.S. citizens. This bill would encourage the facilitation of the deployment of innovative technologies for aviation security, such as biometric technology at checkpoints, but also would require the TSA to assess the effects on privacy of the expansion of the use of biometric technology, including methods to mitigate any risks to privacy identified by the TSA related to the active or passive collection of biometric data.

This bill also would direct the TSA, in consultation with the Commissioner of the CBP, to review each trusted traveler program and identify any improvements that could be made to increase information and data sharing across such programs and to allow the public to access and link to the applications for enrollment in all such programs from one online portal. Finally, this legislation

would affect the privacy of certain air carrier and airport employees as it would authorize air carriers, airports, and airport operators to get immediate notification of any criminal activity relating to an employee with access to an airport or its perimeter.

#### PAPERWORK

The Committee does not anticipate a significant increase in paperwork burdens resulting from the passage of this legislation. In those areas where the bill does require additional paperwork, it is aimed at improving aviation security and is otherwise part of the normal duties of the affected agencies. The Secretary, the TSA Administrator, the Comptroller General, the Air Cargo Subcommittee of the Aviation Security Advisory Committee (ASAC), and a TSA-established innovation task force would be required to prepare a variety of reports and studies for Congress. These reports would provide the legislative branch and public with critical information, assessments, reviews, and recommendations that would enhance the ability of the Committee to carry out its oversight responsibilities with regard to aviation security policy and programs.

In order to ensure the security of the national airspace system, manufacturers of security technology systems would encounter paperwork requirements to voluntarily participate in the TSA-developed framework for third party testing and verification of security technology. Third party explosives detection canine teams also would encounter paperwork to voluntarily satisfy any new standards for the screening of individuals, property, and air cargo.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; table of contents; references.*

This section would provide that the bill may be cited as the “TSA Modernization Act.” This section also would provide a table of contents for the bill.

##### *Section 2. Definitions.*

This section would define the terms “Administrator,” “appropriate committees of Congress,” “ASAC,” “Secretary,” and “TSA” used in this Act.

#### TITLE I—ORGANIZATIONS AND AUTHORIZATIONS

##### *Section 101. Authorization of appropriations.*

This section would provide an authorization of appropriations for the TSA for salaries, operations, and maintenance of the TSA at an amount of \$7,810,196,000 for fiscal year (FY) 2018, \$7,849,247,000 for FY 2019, and \$7,888,494,000 for FY 2020. The enacted funding for FY 2017 was \$7,771,340,000.

*Section 102. Administrator of the Transportation Security Administration; 5-year term.*

This section would make technical and conforming amendments to title 49 of the United States Code to reflect the current title of the TSA Administrator and the transfer of the TSA from the Department of Transportation to the DHS. This section would outline the pay scale and qualifications necessary for an individual to serve as the Administrator or Deputy Administrator, as well as the functions of each position. This section also would set a 5-year term for any TSA Administrator serving a term that began after August 1, 2017.

*Section 103. Transportation Security Administration organization.*

This section would amend title 49 of the United States Code to account for key areas of the leadership and organizational structure of the TSA consistent with current practice. The TSA Administrator would be required to appoint individuals, each of whom would report directly to the TSA Administrator or the TSA Administrator's designated direct report, to be responsible for each of the following areas: aviation security operations and training; surface transportation security operations and training; security policy and industry engagement; international strategy and operations; trusted and registered traveler programs; technology acquisition and deployment; inspection and compliance; civil rights, liberties, and traveler engagement; and legislative and public affairs.

*Section 104. Transmittals to Congress.*

This section would require the TSA to transmit each report, legislative proposal, or other communication of the Executive Branch related to the TSA, and required to be submitted, directly to Congress or the appropriate committees of Congress.

TITLE II—AVIATION SECURITY

SUBTITLE A—SECURITY TECHNOLOGY

*Section 201. Third party testing and evaluation of screening technology.*

This section would direct the TSA to develop and implement a program that enables third party testing and verification of screening technology as an alternative to the TSA's testing and evaluation process before acquisition or deployment. The Committee intends that this third party testing include security technology algorithms. To the extent practicable and permissible under the law, the TSA would be required to share detection testing information and standards with appropriate international partners and coordinate with them to harmonize TSA testing and evaluation with relevant international standards. The TSA also would be required to develop a testing and verification framework for third party testing using a phased implementation approach to allow the TSA and the third party to establish best practices. The TSA would be required to request that ASAC's Security Technology Subcommittee, in consultation with relevant industry representatives, develop and submit recommendations for the third party testing and verification framework. This section also would direct the TSA to prioritize

field testing and evaluation of security technology at airports and on site at manufacturing companies whenever possible.

*Section 202. Reciprocal recognition of security standards.*

This section would direct the TSA, in coordination with the European Civil Aviation Conference and Canadian Air Transport Security Authority, to develop a validation process for the reciprocal recognition of security equipment technology approvals among international security partners or recognized certification authorities for deployment. This validation process would be required to ensure that the certification process of each participating international security partner or recognized certification authority complies with the TSA security standards.

*Section 203. Transportation Security Laboratory.*

This section would authorize the TSA to administer the existing Transportation Security Laboratory (TSL), and would require the TSA to conduct periodic reviews on the screening technology test and evaluation process conducted at the TSL to identify any improvements that should be made to better support and facilitate acquisition decisions.

*Section 204. Innovation Task Force.*

This section would require the TSA to establish an ITF to cultivate innovations in aviation security, develop and recommend how to streamline requirements, and accelerate the development and introduction of innovative security technologies and improvements to aviation security operations. The ITF would be chaired by a designee of the TSA Administrator and be composed of members of offices within the TSA, other relevant components of DHS, and industry representatives that the Administrator considers appropriate. This section would require the ITF to identify and develop innovative technologies or emerging security capabilities designed to enhance aviation security, conduct quarterly meetings with industry, and submit to the appropriate committees of Congress an annual report on the effectiveness of key performance data from task force sponsored projects and checkpoint enhancements.

*Section 205. 5-Year technology investment plan update.*

This section would amend the Act of 2002 to require the TSA Administrator to annually submit to Congress an appendix to the budget request and publish in an unclassified format in the public domain an update of the 5-year technology investment plan and information about acquisitions completed during the preceding FY.

*Section 206. Biometrics expansion.*

This section would instruct the TSA, not later than 270 days after the date of enactment and in coordination with the CBP to do the following: assess the operational security impact of biometric technology to identify passengers; assess the effects on privacy of the expansion of the use of biometric technology, including methods to mitigate any risks to privacy related to the collection of biometric data; and facilitate, if appropriate, the deployment of such technology at checkpoints, screening lanes, bag drop and boarding areas, and other areas where such deployment would enhance secu-

rity and facilitate passenger movement. The Committee intends that any deployment of biometric technology prioritize the alignment of the biometrics used for both the TSA and the CBP. This section also would require the TSA to submit to the appropriate committees of Congress a report on such assessments and deployment and to publish the privacy assessment on a publicly accessible website, if practicable.

*Section 207. Pilot program for automated exit lane technology.*

This section would direct the TSA, not later than 90 days after the date of enactment, to establish a pilot program in partnership with applicable airport directors to implement and evaluate the use of automated exit lane technology at small hub and nonhub airports. Appropriations to carry out this pilot program would be authorized at \$15,000,000 for each of FY 2018 through FY 2020, and the Federal share of the cost of the pilot program under this section would not exceed 85 percent of the total cost of the program. The section also would require the GAO, not later than 2 years after the date of enactment, to report to the appropriate committees of Congress on the pilot program, including the level of participation, return on investment, and recommendations to expand or discontinue the pilot program.

*Section 208. Authorization of appropriations; exit lane security.*

This section would authorize appropriations for the TSA's monitoring of passenger exit lane security at the amount of \$77,000,000 for FY 2018 through FY 2020. This is consistent with FY 2017 funding.

*Section 209. Real-time security checkpoint wait times.*

This section would direct the TSA, not later than 18 months after the date of enactment, to make publicly available information on wait times at each airport security checkpoint. The TSA would be required to provide this information in real time via technology and publish it both online and in physical locations at the applicable airport terminal in a manner that does not increase public area security risks. This section also would define the term "wait time" as the period beginning when a passenger enters a queue for a screening checkpoint and ending when the passenger has begun divestment of items requiring screening at that checkpoint.

*Section 210. GAO report on universal deployment of advanced imaging technologies.*

This section would require the GAO to assess the cost to the TSA or an airport to redesign airport security areas to fully deploy advanced imaging technologies at airports where the TSA conducts or oversees security screening operations. This study would identify the costs to the TSA or an airport to purchase, install, and maintain advanced imaging technologies and assets. This section also would require the GAO to submit a report to the appropriate committees of Congress on the findings of this study not later than 1 year after the date of enactment of this Act.

*Section 211. Testing and verification performance objectives.*

This section would require the TSA to establish performance objectives for the testing and verification of security technology, including testing and verification conducted by third parties, to ensure that progress is made toward reducing the time for each phase of testing while maintaining security, eliminating testing and verification delays, and increasing accountability. This section also would require the TSA to establish and continually track performance metrics for each type of security technology submitted for testing and verification to use these metrics to generate data on an ongoing basis, and to measure progress toward the achievement of the performance objectives established in this section. Finally, this section would require the TSA to submit a report to the appropriate committees of Congress assessing the extent to which the performance objectives established in this section have been met 2 years after the date of enactment of this Act.

*Section 212. Computed tomography pilot program.*

This section would direct the TSA to carry out a pilot program to test the use of screening equipment using computed tomography technology to screen baggage at passenger screening checkpoints at airports not later than 90 days after the date of enactment of this Act.

SUBTITLE B—PUBLIC AREA SECURITY

*Section 221. Third party canines.*

This section would require the TSA, not later than 120 days after the date of enactment of this Act, to develop and issue standards that a third party explosives detection canine team must satisfy to be certified for the screening of individuals and property in public areas of an airport. This section also would require the TSA to enter into an agreement with at least one third party entity, not later than 180 days after the date of enactment of this Act, to test and certify the capabilities of canine teams in accordance with the TSA-developed standards. The Committee intends for the TSA to create an approved vendor list including any third party entity with which the TSA enters into an agreement. Before entering this agreement, this section would require the TSA to do the following: evaluate the third party's ability to effectively evaluate canine teams; designate at least three evaluation centers to which vendors may send canine teams for testing and certification by the third party; and periodically assess the program at the evaluation centers to ensure the proficiency of the canine team beyond the initial testing and certification by the third party entity.

This section would authorize the TSA to use the other transaction authority under section 114(m) of title 49, United States Code, or other authority that the TSA Administrator considers appropriate, to expedite the deployment of additional canine teams. To determine best practices for the use of third party entities to test and certify the capabilities of canine teams, this section would require the TSA to consult with the Secretary of State, non-profit organizations that train, certify, and provide the services of canines, and institutions of higher education with research programs related to the use of canines for the screening of individuals and

property before entering into an agreement with a third party entity. Finally, this section would require the TSA to develop and implement a process for the TSA to procure third party explosives detection canine teams certified under the TSA-developed standards, and would direct the TSA to authorize an aviation stakeholder in coordination with the Federal Security Director at an applicable airport, to contract with, procure or purchase, and deploy one or more third party explosives detection canine teams certified under the TSA-developed standards to augment public area security at that stakeholder's airport.

*Section 222. Tracking and monitoring of canine training and testing.*

This section would require the TSA to use, not later than 180 days after the date of enactment of this Act and to the extent practicable, a digital monitoring system for all training, testing, and validation or certification of public and private canine assets utilized by the TSA to facilitate improved review, data analysis, and record keeping of canine testing performance and program administration.

*Section 223. VIPR team statistics.*

This section would require the TSA to notify the appropriate committees of Congress not later than 90 days after the date of enactment of this Act, and annually thereafter, of the number of Visible Intermodal Prevention and Response (VIPR) teams available for deployment at transportation facilities, including the number of VIPR team operations that include explosive detection canine teams and the distribution of VIPR team operations deployed across different modes of transportation.

*Section 224. Public area best practices.*

This section would require the TSA to periodically submit to Federal Security Directors and appropriate aviation security stakeholders information on any best practices developed by the TSA or appropriate aviation stakeholders related to protecting infrastructure from emerging threats to public spaces of transportation venues. The TSA would be required to expand and improve its information sharing with appropriate aviation stakeholders, to continue to disseminate relevant intelligence products and conduct classified briefings on a regular basis, and to encourage aviation security stakeholders to utilize mass notification systems to disseminate information to transportation community employees, travelers, and the general public.

This section also would require the DHS, in coordination with the TSA, to expand public awareness programs to include transportation network public area employees. Finally, this section would allow an air carrier, airport, or airport operator to utilize the Federal Bureau of Investigation's (FBI's) Rap Back Service, and other vetting tools as appropriate, including the No-Fly and Selectee lists, to get immediate notification of any criminal activity relating to an employee with access to an airport or its perimeter.

*Section 225. Law Enforcement Officer Reimbursement Program.*

This section would direct the TSA to increase the number of awards and total amount of each award under the LEO Reimbursement Program, and would authorize appropriations for this program of \$55,000,000 for each of FY 2018 through FY 2020. Funding for FY 2017 was \$45,000,000. This section also would require the TSA to review and, if necessary, revise the regulations and compliance policies related to the LEO Reimbursement Program to reduce any administrative burdens on applicants or recipients.

SUBTITLE C—PASSENGER AND CARGO SECURITY

*Section 231. PreCheck Program.*

This section would require the TSA to administer and expand, not later than 180 days after the date of enactment of this Act, the PreCheck Program by requiring the TSA to enter into an agreement with at least two private sector entities to increase the methods and capabilities available for the public to enroll in the program. At least one of these agreements would be required to include a start-to-finish secure online or mobile enrollment capability and vetting by means other than biometrics, such as risk assessment, if the vetting is evaluated and certified by the Secretary, meets the definition of a qualified anti-terrorism technology under section 865 of the Act of 2002, or is determined by the TSA Administrator to provide a risk assessment that is as effective as fingerprint-based criminal history record checks conducted by the FBI. At least one of these agreements also would be required to include start-to-finish secure online or mobile enrollment capability and vetting of an applicant by means of biometrics if the collection meets the standards developed by the National Institute of Standards and Technology and protects any personally identifiable information. This section also would set target enrollment for the PreCheck Program at the following levels: 7,000,000 passengers before October 1, 2018; 10,000,000 passengers before October 1, 2019; and 15,000,000 passengers before October 1, 2020. According to the TSA, current enrollments are at 5.4 million passengers.

This section also would require the TSA to enter into, not later than 90 days after the date of enactment of this Act, at least two agreements to market the PreCheck Program and to implement a long-term strategy for partnering with the private sector to encourage enrollment in the program. This section also would enhance identity verification of enrollees in the PreCheck Program by requiring the TSA to coordinate with appropriate components of the DHS to verify the identities and citizenships of enrollees, partner with the private sector to use biometrics and authentication standards to facilitate enrollment, and leverage existing resources of airports to expedite identity verification. The TSA would be required to ensure that PreCheck Program screening lanes are open and available to enrollees during high-volume times at appropriate airports, and make efforts to provide expedited screening to enrollees in standard lanes when PreCheck Program screening lanes are closed. The TSA would be required to initiate an assessment to identify any security vulnerabilities in the program's vetting process and would be required to ensure that the PreCheck Program's enrollment capabilities are separate from any other related TSA

program, initiative, or procurement. Finally, this section would require that any funds expended to expand PreCheck enrollment are expended in a manner that meets the requirements of this section.

*Section 232. Trusted traveler programs; collaboration.*

This section would require the TSA, in consultation with the CBP, to review the PreCheck Program and each trusted traveler program administered by the CBP, and to identify and implement any improvements that can be made to such programs, including by streamlining and integrating the requirements and operations of such programs, increasing information and data sharing across such programs, and allowing the public to access and link applications for enrollment in these programs from one online portal. In conducting this review, the TSA, in consultation with the CBP, would be required to identify any law, including any regulation, policy, or procedure, that may inhibit collaboration among DHS agencies regarding these programs and recommend any action that can be taken to eliminate such barriers to collaboration or implementation. Finally, this section would require that the TSA, in consultation with the CBP, submit to the appropriate committees of Congress a report on the findings of this review.

*Section 233. Passenger security fee.*

This section would amend a statutory provision imposing a uniform security fee on passengers of air carriers by, beginning on October 1, 2025, crediting such fees as offsetting collections to appropriations made for aviation security measures carried out by the TSA.

*Section 234. Third party canine teams for air cargo security.*

This section would direct the TSA to develop and issue standards for the use of third party explosives detection canine assets for the primary screening of air cargo, and would require the TSA to facilitate the deployment of such assets that meet the TSA-developed certification standards. This section also would require that the TSA-developed certification standards be made available to vendors seeking to train and deploy third party explosive detection canine assets and that all costs for the training, certification, and use of the supplied canines be borne by private industry and not the Federal Government.

*Section 235. Known Shipper Program review.*

This section would require the TSA to direct the Air Cargo Subcommittee of ASAC to conduct a comprehensive review and security assessment of the Known Shipper Program and submit its findings and recommendations on whether the program should be modified or if the program's objectives are being met by other fulfilled mandates.

*Section 236. Screening partnership program updates.*

This section would allow an operator of an airport, airport terminal, or airport security checkpoint, if the operator chooses, to submit to the TSA an application for a private screening company, chosen from a list of qualified companies created by the TSA, to carry out the screening of property and passengers pursuant to a

contract with the TSA. Also, it would require that the TSA either approve or deny such an application within 30 days after receipt. If the application is approved, the TSA would be required to enter into a contract with a company to provide screening services within 60 days after the selection of the company by the operator. The contract price would be equal to or less than the comprehensive cost to the Federal Government to provide such screening services. This section also would require the TSA to approve or deny each application to the Screening Partnership Program made before enactment of this Act not later than 30 days after the date of enactment.

*Section 237. Screening performance assessments.*

This section would require the TSA to quarterly provide to the director of an airport an assessment of the screening performance of that airport in comparison to the mean average performance of all airports in the equivalent airport category and a briefing on the results of performance data reports that includes a scorecard of objective metrics related to passenger throughput, wait times, and employee human capital measures collected by the TSA.

*Section 238. TSA Academy review.*

This section would require the GAO to conduct an assessment of the efficiency and effectiveness of the TSA Academy regarding the training of new transportation security officers (TSOs) at the TSA Academy compared to the training of new TSOs when it was conducted at local airports. The section also would require the GAO to submit a report on its findings and recommendations to the appropriate committees of Congress not later than 270 days after the date of enactment of this Act. This assessment would be required to include a cost-benefit analysis of training new TSOs and Screening Partnership Program contractor hires at the TSA Academy, as well as an examination of the impact on performance, professionalism, and retention rates of such employees, and a comparison to the same standards when the training had been conducted at the employees' local airports. Finally, this assessment would examine whether new hire training at the TSA Academy has had any impact on the airports and companies that participate in the Screening Partnership Program.

*Section 239. Improvements for screening of disabled passengers.*

This section would require the TSA to revise the training requirements for TSOs related to the screening of disabled passengers not later than 180 days after the date of enactment of this Act. This section would require the TSA to address certain training specifications in the revision of the training requirements; implement revised training during initial and recurrent training of all TSOs; record each complaint from a disabled passenger; identify the most frequent concerns raised or accommodations requested; determine the best practices for addressing these concerns, and recommend appropriate training based on such best practices; and require signage at the security checkpoints at each Category X airport that specifies how to contact and how to receive assistance from the appropriate TSA employee at the airport designated to address complaints of screening mistreatment based on disability.

This section also would require the TSA to submit a report to the appropriate committees of Congress on the checkpoint experiences of disabled passengers each FY.

#### SUBTITLE D—FOREIGN AIRPORT SECURITY

##### *Section 241. Last point of departure airports; security directives.*

This section would require the TSA, to the maximum extent practicable, to consult and notify trade association representatives for affected air carriers and relevant Federal agencies prior to making changes to security standards via security directives and emergency amendments for last points of departure. The Committee understands that certain circumstances and threat information may warrant immediate action by the TSA Administrator without providing affected parties with any advance notice or opportunity for consultation. Such was the case, for example, with the printer cartridge plot in 2010, in which improvised explosive devices were discovered in air cargo originating in Yemen and destined for the United States. The Committee intends to provide the TSA with flexibility when timely updates are necessary, and does not intend to create opportunities for air carriers to challenge or sue the TSA if they are not adequately consulted. The GAO would be required to review, not later than 1 year after the date of enactment of this Act, the effectiveness of the TSA process to update, consolidate, or revoke security directives, emergency amendments, and other policies related to international aviation security at LPD airports, and submit a report on its findings and any recommendations to the appropriate committees of Congress. This section also would require the TSA to immediately rescreen passengers and baggage arriving from an airport outside the United States upon discovery of specific threat intelligence, and to notify the appropriate committees of Congress not later than 1 day after the TSA determines that a foreign air carrier is in violation of applicable security requirements.

##### *Section 242. Tracking security screening equipment from last point of departure airports.*

This section would require the TSA, before any donation of security screening equipment to a foreign LPD airport operator, to report to Congress on how foreign government officials will document and track removal or disposal of screening equipment to ensure that it does not come into the possession of terrorists or otherwise pose a risk to security. The TSA also would be required to collaborate with other aviation authorities to advance a global standard for each international airport to document and track the removal and disposal of any security screening equipment to ensure that the equipment does not come into the possession of a terrorist or otherwise pose a security risk.

##### *Section 243. International security standards.*

This section would require the TSA to consult with the Ambassador to the International Civil Aviation Organization (ICAO) and notify the appropriate committees of Congress of any proposed international improvements to aviation security not later than 90 days after the date of enactment of this Act. The TSA Administrator and Ambassador would be required to take any action they

consider necessary to advance such aviation security proposals and brief the appropriate committees of Congress on the implementation of such proposals not later than 180 days after the date of enactment of this Act.

#### SUBTITLE E—COCKPIT AND CABIN SECURITY

##### *Section 251. Federal air marshal service updates.*

This section would require the TSA to develop a standard written agreement not later than 60 days after the date of enactment of this Act for all future negotiations and agreements between the United States Government and foreign governments regarding Federal air marshal coverage of flights to and from the United States. Not later than 180 days after enactment, all such agreements would be required to be in writing and signed by the TSA Administrator or another authorized United States Government representative, except in specific instances. For every such agreement, the TSA would be required to transmit a copy of the agreement to the appropriate committees of Congress within 30 days of the date the agreement is signed or, if there is no written agreement, to submit to the appropriate committees of Congress the name of the applicable foreign government or partner, an explanation for why no written agreement exists, and a justification for the determination that such mission is necessary for aviation security. This section also would require the TSA to endeavor to acquire automated capabilities or technologies for scheduling Federal air marshal service missions based on current risk modeling.

##### *Section 252. Crew member self-defense training.*

This section would require the TSA, in consultation with the FAA, to continue to carry out and encourage increased participation by air carrier employees in the TSA's voluntary self-defense training program.

##### *Section 253. Flight deck safety and security.*

This section would require the TSA, not later than 90 days after the date of enactment of this Act, to consult with the FAA to complete a detailed threat assessment to identify any safety or security risks associated with unauthorized access to the flight decks on commercial aircraft, as well as any appropriate measures that should be taken based on such risks. This section also would require the TSA, in coordination with the FAA, to disseminate RTCA Document (DO-329) Aircraft Secondary Barriers and Alternative Flight Deck Security Procedure to aviation stakeholders, including air carriers and flight crew, to convey effective methods and best practices to protect the flight deck.

##### *Section 254. Carriage of weapons, explosives, and incendiaries by individuals.*

This section would require the TSA to periodically review and amend the interpretive rule (68 Fed. Reg. 7444) that provides guidance to the public on the types of property prohibited from being carried on an airplane under section 1540.111 of title 14, Code of Federal Regulations. Before amending the interpretive rule to include or remove a prohibited item from the list, the TSA would be

required to consult with appropriate aviation security stakeholders, including ASAC, and to research and evaluate the impact of the action on security risks or screening operations and whether the amendment is consistent with international standards and guidance. This section also would prohibit amending the interpretive rule to allow any knife into an airport sterile area or the cabin of an aircraft, with the exception of plastic or round bladed butter knives. For any amendment to the interpretive rule, the TSA would be required to publish the amendment in the Federal Register and notify the appropriate committees of Congress no later than 3 days before such publication.

*Section 255. Federal flight deck officer program improvements.*

This section would require the TSA to designate additional firearms training facilities for recurrent and requalifying training of FFDOs and allow FFDOs to requalify at TSA-approved firearms training facilities, which are defined as private or government-owned gun ranges approved by the TSA to provide recurrent or requalification training utilizing a TSA-approved contractor and a curriculum developed and approved by the TSA. It also would require the TSA to periodically review requalification training intervals and assess whether it is appropriate and sufficient to adjust the time between each requalification training to facilitate continued participation in the FFDO program while still maintaining the effectiveness of the training. It also would require the TSA to periodically review initial and recurrent training requirements and evaluate how training requirements, including the length of training, could be streamlined while maintaining the effectiveness of the training. Moreover, and in accordance with any applicable TSA application appeals processes, an inactive FFDO would be able to return to active status upon successful completion of a recurrent training program.

This section also would provide that the TSA may not establish medical or physical standards for a pilot to become a FFDO that are inconsistent with or more stringent than FAA requirements for the issuance of the required airman medical certificate under existing regulations.

Finally, this section would harmonize, to the extent practicable, the policies relating to the carriage of firearms on flights in foreign air transportation by FFDOs with the policies of the Federal air marshal program for carrying firearms on such flights and carrying out FFDO duties, notwithstanding Annex 17 of the ICAO.

TITLE III—CONFORMING AND MISCELLANEOUS AMENDMENTS

The provisions in this title generally would make technical and conforming edits to title 49 of the United States Code, including by updating the current title of the TSA Administrator and transferring authorities granted to the Under Secretary of Transportation for Security at the Department of Transportation to the Administrator of the TSA under the DHS.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

### PART III. EMPLOYEES

#### SUBPART D. PAY AND ALLOWANCES

#### CHAPTER 53. PAY RATES AND SYSTEMS

#### SUBCHAPTER II. EXECUTIVE SCHEDULE PAY RATES

#### § 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

\* \* \* \* \*

Under Secretary of Homeland Security for Management.  
*Administrator of the Transportation Security Administration.*

\* \* \* \* \*

#### § 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

\* \* \* \* \*

Deputy Administrator, Federal Aviation Administration.  
*Deputy Administrator, Transportation Security Administration.*

\* \* \* \* \*

## TITLE 49. TRANSPORTATION

### SUBTITLE I. DEPARTMENT OF TRANSPORTATION

#### CHAPTER 1. ORGANIZATION

#### § 106. Federal Aviation Administration

(a) \* \* \*

[(g) DUTIES AND POWERS OF ADMINISTRATOR.—

[(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

[(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d), 40113(e), 40114(a), and 40119, chapter 445 (except sections 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506, 44509, 44510, 44514, and 44515), chapter 447 (except sections 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and 44723), chap-

ter 449 (except sections 44903(d), 44904, 44905, 44907-44911, 44913, 44915, and 44931-44934), chapter 451, chapter 453, sections 46104, 46301(d) and (h)(2), 46303(c), 46304-46308, 46310, 46311, and 46313-46316, chapter 465, and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

[(B) additional duties and powers prescribed by the Secretary of Transportation.

[(2) In carrying out sections 40119, 44901, 44903(a)-(c) and (e), 44906, 44912, 44935-44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.]

(g) *DUTIES AND POWERS OF ADMINISTRATOR.*—*The Administrator shall carry out the following:*

(1) *Duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in the following:*

(A) *Section 308(b).*

(B) *Subsections (c) and (d) of section 1132.*

(C) *Sections 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d), 40113(e), and 40114(a).*

(D) *Chapter 445, except sections 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506, 44509, 44510, 44514, and 44515.*

(E) *Chapter 447, except sections 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and 44723.*

(F) *Chapter 451.*

(G) *Chapter 453.*

(H) *Section 46104.*

(I) *Subsections (d) and (h)(2) of section 46301 and sections 46303(c), 46304 through 46308, 46310, 46311, and 46313 through 46316.*

(J) *Chapter 465.*

(K) *Sections 47504(b) (related to flight procedures), 47508(a), and 48107.*

(2) *Additional duties and powers prescribed by the Secretary of Transportation.*

(h) \* \* \*

#### **§ 114. Transportation Security Administration**

(a) *IN GENERAL.*—The Transportation Security Administration shall be an administration of the [Department of Transportation] *Department of Homeland Security.*

[(b) *UNDER SECRETARY.*—

[(1) *APPOINTMENT.*—The head of the Administration shall be the Under Secretary of Transportation for Security. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

[(2) *QUALIFICATIONS.*—The Under Secretary must—

[(A) be a citizen of the United States; and

[(B) have experience in a field directly related to transportation or security.

[(3) TERM.—The term of office of an individual appointed as the Under Secretary shall be 5 years.]

(b) LEADERSHIP.—

(1) HEAD OF TRANSPORTATION SECURITY ADMINISTRATION.—

(A) APPOINTMENT.—*The head of the Administration shall be the Administrator of the Transportation Security Administration (referred to in this section as the “Administrator”). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.*

(B) QUALIFICATIONS.—*The Administrator must—*

*(i) be a citizen of the United States; and*

*(ii) have experience in a field directly related to transportation or security.*

(C) TERM.—*Effective with respect to any individual appointment by the President, by and with the advice and consent of the Senate, after August 1, 2017, the term of office of an individual appointed as the Administrator shall be 5 years.*

(2) DEPUTY ADMINISTRATOR.—

(A) APPOINTMENT.—*There is established in the Transportation Security Administration a Deputy Administrator, who shall assist the Administrator in the management of the Transportation Security Administration. The Deputy Administrator shall be appointed by the President. The Deputy Administrator shall be Acting Administrator during the absence or incapacity of the Administrator or during a vacancy in the office of Administrator.*

(B) QUALIFICATIONS.—*The Deputy Administrator must—*

*(i) be a citizen of the United States; and*

*(ii) have experience in a field directly related to transportation or security.*

(c) LIMITATION ON OWNERSHIP OF STOCKS AND BONDS.—The [Under Secretary] Administrator may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.

[(d) FUNCTIONS.—The Under Secretary shall be responsible for security in all modes of transportation, including—

[(1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and

[(2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.]

(d) FUNCTIONS.—*The Administrator shall be responsible for—*

*(1) carrying out chapter 449, relating to civil aviation security, and related research and development activities;*

*(2) security in land-based transportation, including railroad, highway, pipeline, public transportation, and over-the-road bus; and*

*(3) supporting the Coast Guard with maritime security.*

(e) SCREENING OPERATIONS.—The [Under Secretary] Administrator shall—

*(1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;*

(2) develop standards for the hiring and retention of security screening personnel;

(3) train and test security screening personnel; and

(4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.

(f) **ADDITIONAL DUTIES AND POWERS.**—In addition to carrying out the functions specified in subsections (d) and (e), the **【Under Secretary】 Administrator** shall—

(1) receive, assess, and distribute intelligence information related to transportation security;

(2) assess threats to transportation;

(3) develop policies, strategies, and plans for dealing with threats to transportation security;

(4) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;

(6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933;

(7) enforce security-related regulations and requirements;

(8) identify and undertake research and development activities necessary to enhance transportation security;

(9) inspect, maintain, and test security facilities, equipment, and systems;

(10) ensure the adequacy of security measures for the transportation of cargo;

(11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;

(13) work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

(14) work with the International Civil Aviation Organization and appropriate aeronautic authorities of foreign governments under section 44907 to address security concerns on passenger flights by foreign air carriers in foreign air transportation; and

(15) carry out such other duties, and exercise such other powers, relating to transportation security as the **【Under Secretary】 Administrator** considers appropriate, to the extent authorized by law.

(g) **NATIONAL EMERGENCY RESPONSIBILITIES.**—

(1) **IN GENERAL.**—**【Subject to the direction and control of the Secretary】 Subject to the direction and control of the Secretary of Homeland Security, the 【Under Secretary】 Administrator,**

during a national emergency, shall have the following responsibilities:

(A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

(B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.

(C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

(D) To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary of *Homeland Security* shall prescribe.

(2) AUTHORITY OF OTHER DEPARTMENTS AND AGENCIES.—The authority of the [Under Secretary] *Administrator* under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

(3) CIRCUMSTANCES.—The Secretary of *Homeland Security* shall prescribe the circumstances constituting a national emergency for purposes of this subsection.

(h) MANAGEMENT OF SECURITY INFORMATION.—In consultation with the Transportation Security Oversight Board, the [Under Secretary] *Administrator* shall—

(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers—

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose

of identifying individuals who may pose a threat to aviation safety or national security.

(i) VIEW OF NTSB.—In taking any action under this section that could affect safety, the [Under Secretary] *Administrator* shall give great weight to the timely views of the National Transportation Safety Board.

(j) ACQUISITIONS.—

(1) IN GENERAL.—The [Under Secretary] *Administrator* is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise) such real property, or any interest therein, within and outside the continental United States, as the [Under Secretary] *Administrator* considers necessary;

(B) to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain such personal property (including office space and patents), or any interest therein, within and outside the continental United States, as the [Under Secretary] *Administrator* considers necessary;

(C) to lease to others such real and personal property and to provide by contract or otherwise for necessary facilities for the welfare of its employees and to acquire, maintain, and operate equipment for these facilities;

(D) to acquire services, including such personal services as the Secretary of *Homeland Security* determines necessary, and to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain research and testing sites and facilities; and

(E) in cooperation with the Administrator of the Federal Aviation Administration, to utilize the research and development facilities of the Federal Aviation Administration.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(k) TRANSFERS OF FUNDS.—The [Under Secretary] *Administrator* is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out [functions transferred, on or after the date of enactment of the Aviation and Transportation Security Act,] *functions assigned by law to the [Under Secretary] Administrator*.

(l) REGULATIONS.—

(1) IN GENERAL.—The [Under Secretary] *Administrator* is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.

(2) EMERGENCY PROCEDURES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the [Under Secretary] *Administrator* determines that a regulation or security directive must be issued immediately in order to protect transportation security, the [Under Secretary] *Administrator* shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the [Under Secretary] *Administrator*.

(3) FACTORS TO CONSIDER.—In determining whether to issue, rescind, or revise a regulation under this section, the [Under Secretary] *Administrator* shall consider, as a factor in the final determination, whether the costs of the regulation are excessive in relation to the enhancement of security the regulation will provide. The [Under Secretary] *Administrator* may waive requirements for an analysis that estimates the number of lives that will be saved by the regulation and the monetary value of such lives if the [Under Secretary] *Administrator* determines that it is not feasible to make such an estimate.

(4) AIRWORTHINESS OBJECTIONS BY FAA.—

(A) IN GENERAL.—The [Under Secretary] *Administrator* shall not take an aviation security action under this title if the Administrator of the Federal Aviation Administration notifies the [Under Secretary] *Administrator* that the action could adversely affect the airworthiness of an aircraft.

(B) REVIEW BY SECRETARY.—Notwithstanding subparagraph (A), the [Under Secretary] *Administrator* may take such an action, after receiving a notification concerning the action from the [Administrator under subparagraph (A)] *Administrator of the Federal Aviation Administration under subparagraph (A)*, if the Secretary of Transportation subsequently approves the action.

(m) PERSONNEL AND SERVICES; COOPERATION BY UNDER SECRETARY.—

(1) AUTHORITY OF UNDER SECRETARY.—In carrying out the functions of the Administration, the [Under Secretary] *Administrator* shall have the same authority as is provided to the Administrator of the Federal Aviation Administration under subsections (l) and (m) of section 106.

(2) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall have the same authority to provide services, supplies, equipment, personnel, and facilities to the [Under Secretary] *Administrator* as the head has to provide services, supplies, equipment, personnel, and facilities to the Administrator of the Federal Aviation Administration under section 106(m).

(n) PERSONNEL MANAGEMENT SYSTEM.—The personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration, or, subject to the requirements of such section, the [Under Secretary] *Administrator* may make such modifications to the personnel management system with respect to such employees as the [Under Secretary] *Administrator* considers appropriate, such as adopting aspects of other personnel systems of the [Department of Transportation] *Department of Homeland Security*.

(o) **AUTHORITY OF INSPECTOR GENERAL.**—The Transportation Security Administration shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.) and other laws relating to the authority of the Inspector General of the [Department of Transportation] *Department of Homeland Security*.

(p) **LAW ENFORCEMENT POWERS.**—

(1) **IN GENERAL.**—The [Under Secretary] *Administrator* may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) **POWERS.**—While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph

(1) may—

(A) carry a firearm;

(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any felony cognizable under the laws of the United States if the officer has probable cause to believe that the person to be arrested has committed or is committing the felony; and

(C) seek and execute warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

(3) **GUIDELINES ON EXERCISE OF AUTHORITY.**—The authority provided by this subsection shall be exercised in accordance with guidelines prescribed by the [Under Secretary] *Administrator*, in consultation with the Attorney General of the United States, and shall include adherence to the Attorney General's policy on use of deadly force.

(4) **REVOCATION OR SUSPENSION OF AUTHORITY.**—The powers authorized by this subsection may be rescinded or suspended should the Attorney General determine that the [Under Secretary] *Administrator* has not complied with the guidelines prescribed in paragraph (3) and conveys the determination in writing to the [Secretary of Transportation] *Secretary of Homeland Security* and the [Under Secretary] *Administrator*.

(q) **AUTHORITY TO EXEMPT.**—The [Under Secretary] *Administrator* may grant an exemption from a regulation prescribed in carrying out this section if the [Under Secretary] *Administrator* determines that the exemption is in the public interest.

(r) **NONDISCLOSURE OF SECURITY ACTIVITIES.**—

(1) **IN GENERAL.**—Notwithstanding section 552 of title 5, the [Under Secretary] *Administrator* shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107-71) or under chapter 449 of this title if the [Under Secretary] *Administrator* decides that disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the security of transportation.

(2) AVAILABILITY OF INFORMATION TO CONGRESS.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) LIMITATION ON TRANSFERABILITY OF DUTIES.—Except as otherwise provided by law, the [Under Secretary] *Administrator* may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.

(4) LIMITATIONS.—Nothing in this subsection, or any other provision of law, shall be construed to authorize the designation of information as sensitive security information (as defined in section 1520.5 of title 49, Code of Federal Regulations)—

(A) to conceal a violation of law, inefficiency, or administrative error;

(B) to prevent embarrassment to a person, organization, or agency;

(C) to restrain competition; or

(D) to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.

(s) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

(1) IN GENERAL.—The Secretary of Homeland Security shall develop, prepare, implement, and update, as needed—

(A) a National Strategy for Transportation Security; and

(B) transportation modal security plans addressing security risks, including threats, vulnerabilities, and consequences, for aviation, railroad, ferry, highway, maritime, pipeline, public transportation, over-the-road bus, and other transportation infrastructure assets.

(2) ROLE OF SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in developing, revising, and updating the documents required by paragraph (1).

(3) CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—The National Strategy for Transportation Security shall include the following:

(A) An identification and evaluation of the transportation assets in the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

(B) The development of risk-based priorities, based on risk assessments conducted or received by the Secretary of Homeland Security (including assessments conducted under the Implementing Recommendations of the 9/11 Commission Act of 2007) across all transportation modes and realistic deadlines for addressing security needs associated with those assets referred to in subparagraph (A).

(C) The most appropriate, practical, and cost-effective means of defending those assets against threats to their security.

(D) A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, local, and tribal authorities and establishes mechanisms for encouraging cooperation and participation by private sector entities, including nonprofit employee labor organizations, in the implementation of such plan.

(E) A comprehensive delineation of prevention, response, and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States and threatened and executed acts of terrorism outside the United States to the extent such acts affect United States transportation systems.

(F) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets. Transportation security research and development projects shall be based, to the extent practicable, on such prioritization. Nothing in the preceding sentence shall be construed to require the termination of any research or development project initiated by the Secretary of Homeland Security or the Secretary of Transportation before the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(G) A 3- and 10-year budget for Federal transportation security programs that will achieve the priorities of the National Strategy for Transportation Security.

(H) Methods for linking the individual transportation modal security plans and the programs contained therein, and a plan for addressing the security needs of intermodal transportation.

(I) Transportation modal security plans described in paragraph (1)(B), including operational recovery plans to expedite, to the maximum extent practicable, the return to operation of an adversely affected transportation system following a major terrorist attack on that system or other incident. These plans shall be coordinated with the resumption of trade protocols required under section 202 of the SAFE Port Act (6 U.S.C. 942) and the National Maritime Transportation Security Plan required under section 70103(a) of title 46.

(4) **[SUBMISSIONS OF PLANS TO CONGRESS]** *SUBMISSION OF PLANS.*—

**[(A) INITIAL STRATEGY.]**—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appropriate congressional committees not later than April 1, 2005.]

**[(B)](A) [SUBSEQUENT VERSIONS] IN GENERAL.**—[After December 31, 2005, the] *The* Secretary of Homeland Security shall submit the National Strategy for Transportation

Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

**[(C)](B) PERIODIC PROGRESS REPORT.—**

(i) **REQUIREMENT FOR REPORT.**—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security, including the transportation modal security plans.

(ii) **CONTENT.**—Each progress report submitted under this subparagraph shall include, at a minimum, the following:

(I) Recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal and intermodal security plans that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, considers appropriate.

(II) An accounting of all grants for transportation security, including grants and contracts for research and development, awarded by the Secretary of Homeland Security in the most recent fiscal year and a description of how such grants accomplished the goals of the National Strategy for Transportation Security.

(III) An accounting of all—

(aa) funds requested in the President's budget submitted pursuant to section 1105 of title 31 for the most recent fiscal year for transportation security, by mode;

(bb) personnel working on transportation security by mode, including the number of contractors; and

(cc) information on the turnover in the previous year among senior staff of the Department of Homeland Security, including component agencies, working on transportation security issues. Such information shall include the number of employees who have permanently left the office, agency, or area in which they worked, and the amount of time that they worked **[for the Department]** *for the Department of Homeland Security*.

(iii) **WRITTEN EXPLANATION OF TRANSPORTATION SECURITY ACTIVITIES NOT DELINEATED IN THE NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.**—At the end of each fiscal year, the Secretary of Homeland Security shall submit to the appropriate congressional committees a written explanation of any Federal transportation security activity that is inconsistent with the

National Strategy for Transportation Security, including the amount of funds to be expended for the activity and the number of personnel involved.

**[(D)](C) CLASSIFIED MATERIAL.**—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

**[(E)](D) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this subsection, the term “appropriate congressional committees” means the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Homeland Security and Governmental Affairs, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**(5) PRIORITY STATUS.**—

**(A) IN GENERAL.**—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

**(B) OTHER PLANS AND REPORTS.**—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;

(ii) the report required by section 44938 of this title;

(iii) transportation modal security plans required under this section;

(iv) the transportation sector specific plan required under Homeland Security Presidential Directive-7; and

(v) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

**(6) COORDINATION.**—In carrying out the responsibilities under this section, the Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall consult, as appropriate, with Federal, State, and local agencies, tribal governments, private sector entities (including nonprofit employee labor organizations), institutions of higher learning, and other entities.

**(7) PLAN DISTRIBUTION.**—The Secretary of Homeland Security shall make available and appropriately publicize an unclassified version of the National Strategy for Transportation Security, including its component transportation modal security plans, to Federal, State, regional, local and tribal authorities, transportation system owners or operators, private sector stakeholders, including nonprofit employee labor organizations representing transportation employees, institutions of higher learning, and other appropriate entities.

**[(u)](t) TRANSPORTATION SECURITY INFORMATION SHARING PLAN.**—

**(1) DEFINITIONS.**—In this subsection:

(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” has the meaning given that term in subsection (s)(4)(E).

(B) PLAN.—The term “Plan” means the Transportation Security Information Sharing Plan established under paragraph (2).

(C) PUBLIC AND PRIVATE STAKEHOLDERS.—The term “public and private stakeholders” means Federal, State, and local agencies, tribal governments, and appropriate private entities, including nonprofit employee labor organizations representing transportation employees.

[(D) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.]

[(E)](D) TRANSPORTATION SECURITY INFORMATION.—The term “transportation security information” means information relating to the risks to transportation modes, including aviation, public transportation, railroad, ferry, highway, maritime, pipeline, and over-the-road bus transportation, and may include specific and general intelligence products, as appropriate.

(2) ESTABLISHMENT OF PLAN.—The Secretary of Homeland Security, in consultation with the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), the Secretary of Transportation, and public and private stakeholders, shall establish a Transportation Security Information Sharing Plan. In establishing the Plan, the Secretary of *Homeland Security* shall gather input on the development of the Plan from private and public stakeholders and the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

(3) PURPOSE OF PLAN.—The Plan shall promote sharing of transportation security information between the Department of Homeland Security and public and private stakeholders.

(4) CONTENT OF PLAN.—The Plan shall include—

(A) a description of how intelligence analysts within the Department of Homeland Security will coordinate their activities within the Department and with other Federal, State, and local agencies, and tribal governments, including coordination with existing modal information sharing centers and the center described in section 1410 of the Implementing Recommendations of the 9/11 Commission Act of 2007;

(B) the establishment of a point of contact, which may be a single point of contact within the Department of Homeland Security, for each mode of transportation for the sharing of transportation security information with public and private stakeholders, including an explanation and justification to the appropriate congressional committees if the point of contact established pursuant to this subparagraph differs from the agency within the Department of *Homeland Security* that has the primary authority, or has been delegated such authority by the Secretary of *Home-*

*land Security*, to regulate the security of that transportation mode;

(C) a reasonable deadline by which the Plan will be implemented; and

(D) a description of resource needs for fulfilling the Plan.

(5) COORDINATION WITH INFORMATION SHARING.—The Plan shall be—

(A) implemented in coordination, as appropriate, with the program manager for the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485); and

(B) consistent with the establishment of the information sharing environment and any policies, guidelines, procedures, instructions, or standards established by the President or the program manager for the implementation and management of the information sharing environment.

[(6) REPORTS TO CONGRESS.—

[(A) IN GENERAL.—Not later than 150 days after the date of enactment of this subsection, and annually thereafter, the Secretary shall submit to the appropriate congressional committees, a report containing the Plan.

[(B) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall submit to the appropriate congressional committees a report on updates to and the implementation of the Plan.]

(6) ANNUAL REPORT ON PLAN.—*The Secretary of Homeland Security shall annually submit to the appropriate congressional committees a report containing the Plan.*

(7) SECURITY CLEARANCES.—The Secretary of Homeland Security shall, to the greatest extent practicable, take steps to expedite the security clearances needed for designated public and private stakeholders to receive and obtain access to classified information distributed under this section, as appropriate.

(8) CLASSIFICATION OF MATERIAL.—The Secretary of Homeland Security, to the greatest extent practicable, shall provide designated public and private stakeholders with transportation security information in an unclassified format.

[(v)](u) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY.—

(1) APPLICATION OF SUBSECTION.—

(A) IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 701 of title 46 and under a provision of this title other than a provision of chapter 449 (in this subsection referred to as an “applicable provision of this title”).

(B) VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed and orders issued by the Secretary of Homeland Security or the Administrator under chapter 449 of this title are provided under chapter 463 of this title.

(C) NONAPPLICATION TO CERTAIN VIOLATIONS.—

(i) Paragraphs (2) through (5) do not apply to violations of regulations prescribed, and orders issued, by

the Secretary of Homeland Security under a provision of this title—

(I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

(II) by a member of the armed forces of the United States when performing official duties; or

(III) by a civilian employee of the Department of Defense when performing official duties.

(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the [Secretary's designee] *Secretary of Defense's designee*.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under an applicable provision of this title.

(B) REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under an applicable provision of this title. The Secretary shall give written notice of the finding of a violation and the penalty.

(B) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary of *Homeland Security* under this subsection, a court may not re-examine issues of liability or the amount of the penalty.

(C) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary of *Homeland Security* under this subsection if—

(i) the amount in controversy is more than—

(I) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(II) \$50,000 if the violation was committed by an individual or small business concern;

(ii) the action is in rem or another action in rem based on the same violation has been brought; or

(iii) another action has been brought for an injunction based on the same violation.

(D) MAXIMUM PENALTY.—The maximum civil penalty the Secretary of *Homeland Security* administratively may impose under this paragraph is—

(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) \$50,000, if the violation was committed by an individual or small business concern.

- (E) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under this section the Secretary of *Homeland Security* shall provide to the person against whom the penalty is to be imposed—
- (i) written notice of the proposed penalty; and
  - (ii) the opportunity to request a hearing on the proposed penalty, if the Secretary of *Homeland Security* receives the request not later than 30 days after the date on which the person receives notice.
- (4) COMPROMISE AND SETOFF.—
- (A) The Secretary of *Homeland Security* may compromise the amount of a civil penalty imposed under this subsection.
  - (B) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.
- (5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary of *Homeland Security*.
- (6) DEFINITIONS.—In this subsection:
- (A) PERSON.—The term “person” does not include—
    - (i) the United States Postal Service; or
    - (ii) the Department of Defense.
  - (B) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).
- (7) ENFORCEMENT TRANSPARENCY.—
- (A) IN GENERAL.—[Not later than December 31, 2008, and annually thereafter, the Secretary] *The Secretary of Homeland Security* shall—
    - (i) provide an annual summary to the public of all enforcement actions taken by the Secretary under this subsection; and
    - (ii) include in each such summary the docket number of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty.
  - (B) ELECTRONIC AVAILABILITY.—Each summary under this paragraph shall be made available to the public by electronic means.
  - (C) RELATIONSHIP TO THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT.—Nothing in this subsection shall be construed to require disclosure of information or records that are exempt from disclosure under sections 552 or 552a of title 5.
  - [(D) ENFORCEMENT GUIDANCE.—Not later than 180 days after the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary shall provide a report to the public describing the enforcement process established under this subsection.
  - [(w) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for—

- [(1) railroad security—
  - [(A) \$488,000,000 for fiscal year 2008;
  - [(B) \$483,000,000 for fiscal year 2009;
  - [(C) \$508,000,000 for fiscal year 2010; and
  - [(D) \$508,000,000 for fiscal year 2011;
- [(2) over-the-road bus and trucking security—
  - [(A) \$14,000,000 for fiscal year 2008;
  - [(B) \$27,000,000 for fiscal year 2009;
  - [(C) \$27,000,000 for fiscal year 2010; and
  - [(D) \$27,000,000 for fiscal year 2011; and
- [(3) hazardous material and pipeline security—
  - [(A) \$12,000,000 for fiscal year 2008;
  - [(B) \$12,000,000 for fiscal year 2009; and
  - [(C) \$12,000,000 for fiscal year 2010.]]

(v) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Transportation Security Security Administration for salaries, operations, and maintenance of the Administration—*

- (1) \$7,810,196,000 for fiscal year 2018;*
- (2) \$7,849,247,000 for fiscal year 2019; and*
- (3) \$7,888,494,000 for fiscal year 2020.*

(w) *LEADERSHIP AND ORGANIZATION.—*

*(1) IN GENERAL.—For each of the areas described in paragraph (2), the Administrator of the Transportation Security Administration shall appoint at least 1 individual who shall—*

- (A) report directly to the Administrator or the Administrator’s designated direct report; and*
- (B) be responsible and accountable for that area.*

*(2) AREAS DESCRIBED.—The areas described in this paragraph are as follows:*

*(A) Aviation security operations and training, including risk-based, adaptive security focused on airport checkpoint and baggage screening operations, cargo inspections, workforce training and development programs, and other specialized programs designed to secure air transportation.*

*(B) Surface transportation security operations and training, including risk-based, adaptive security focused on accomplishing security systems assessments, reviewing and prioritizing projects for appropriated surface transportation security grants, operator compliance with voluntary industry standards, workforce training and development programs, and other specialized programs designed to secure surface transportation.*

*(C) Security policy and industry engagement and planning, including the development, interpretation, promotion, and oversight of a unified effort regarding risk-based, risk-reducing security policies and plans (including strategic planning for future contingencies and security challenges) between government and transportation stakeholders, including airports, domestic and international airlines, general aviation, air cargo, mass transit and passenger rail, freight rail, pipeline, highway and motor carriers, and maritime.*

*(D) International strategy and operations, including agency efforts to work with international partners to secure the global transportation network.*

(E) *Trusted and registered traveler programs, including the management and marketing of the agency's trusted traveler initiatives, including the PreCheck Program, and coordination with trusted traveler programs of other Department of Homeland Security agencies and the private sector.*

(F) *Technology acquisition and deployment, including the oversight, development, testing, evaluation, acquisition, deployment, and maintenance of security technology and other acquisition programs.*

(G) *Inspection and compliance, including the integrity, efficiency and effectiveness of the agency's workforce, operations, and programs through objective audits, covert testing, inspections, criminal investigations, and regulatory compliance.*

(H) *Civil rights, liberties, and traveler engagement, including ensuring that agency employees and the traveling public are treated in a fair and lawful manner consistent with federal laws and regulations protecting privacy and prohibiting discrimination and reprisal.*

(I) *Legislative and public affairs, including communication and engagement with internal and external audiences in a timely, accurate, and transparent manner, and development and implementation of strategies within the agency to achieve congressional approval or authorization of agency programs and policies.*

(3) *NOTIFICATION.—The Administrator shall transmit to the appropriate committees of Congress—*

*(A) not later than 180 days after the date of enactment of the TSA Modernization Act, a list of the names of the individuals appointed under paragraph (1); and*

*(B) an update of the list not later than 5 days after any new individual is appointed under paragraph (1).*

## **§ 115. Transportation Security Oversight Board**

(a) \* \* \*

(c) **DUTIES.**—The Board shall—

(1) review and ratify or disapprove any regulation or security directive issued by the [Under Secretary of Transportation for security] *Administrator of the Transportation Security Administration* under section 114(l)(2) within 30 days after the date of issuance of such regulation or directive;

(2) facilitate the coordination of intelligence, security, and law enforcement activities affecting transportation;

(3) facilitate the sharing of intelligence, security, and law enforcement information affecting transportation among Federal agencies and with carriers and other transportation providers as appropriate;

(4) explore the technical feasibility of developing a common database of individuals who may pose a threat to transportation or national security;

(5) review plans for transportation security;

(6) make recommendations to the [Under Secretary] *Administrator* regarding matters reviewed under paragraph (5).

(d) QUARTERLY MEETINGS.—The Board shall meet at least quarterly.

(e) CONSIDERATION OF SECURITY INFORMATION.—A majority of the Board may vote to close a meeting of the Board to the public, except that meetings shall be closed to the public whenever classified, sensitive security information, or information protected in accordance with section 40119(b), will be discussed.

## TITLE 49. TRANSPORTATION

### SUBTITLE VII. AVIATION PROGRAMS

#### PART A. AIR COMMERCE AND SAFETY

##### SUBPART I. GENERAL

##### CHAPTER 401. GENERAL PROVISIONS

#### § 40109. Authority to exempt

(a) \* \* \*

(b) SAFETY REGULATION.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections 40103(b)(1) and (2) [ , 40119, 44901, 44903, 44906, and 44935-44937 ] of this title when the Administrator decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, and [ sections 44909 ] sections 44909(a), 44909(b), and 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) \* \* \*

#### § 40113. Administrative

(a) GENERAL AUTHORITY.—The Secretary of Transportation (or [ the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or ] *the Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by that Administrator or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be [ carried out by the Administrator ] carried out by that Administrator*) may take action the Secretary [ , Under Secretary, or Administrator, ], *Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration*, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

(b) HAZARDOUS MATERIAL.—In carrying out this part, the Secretary has the same authority to regulate the transportation of hazardous material by air that the Secretary has under section

5103 of this title. However, this subsection does not prohibit or regulate the transportation of a firearm (as defined in section 232 of title 18) or ammunition for a firearm, when transported by an individual for personal use.

(c) GOVERNMENTAL ASSISTANCE.—The Secretary (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may use the assistance of the Administrator of the National Aeronautics and Space Administration and any research or technical department, agency, or instrumentality of the United States Government on matters related to aircraft fuel and oil, and to the design, material, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each department, agency, and instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary or Administrator of the Federal Aviation Administration in carrying out this part. This part does not authorize duplicating laboratory research activities of a department, agency, or instrumentality.

(d) INDEMNIFICATION.—The [Under Secretary of Transportation for Security or the] Administrator of the Federal Aviation Administration may indemnify an officer or employee of the [Transportation Security Administration or Federal Aviation Administration, as the case may be,] *Federal Aviation Administration* against a claim or judgment arising out of an act that the [Under Secretary or Administrator, as the case may be,] *Administrator* decides was committed within the scope of the official duties of the officer or employee.

(e) \* \* \*

#### **§ 40119. Security and research and development activities**

[(a) GENERAL REQUIREMENTS.—The Under Secretary of Transportation for Security and the Administrator of the Federal Aviation Administration each shall conduct research (including behavioral research) and development activities appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence, aircraft piracy, and terrorism and to ensure security.

[(b) DISCLOSURE.—

[(1) Notwithstanding section 552 of title 5 and the establishment of a Department of Homeland Security, the Secretary of Transportation shall prescribe regulations prohibiting disclosure of information obtained or developed in ensuring security under this title if the Secretary of Transportation decides disclosing the information would—

[(A) be an unwarranted invasion of personal privacy;

[(B) reveal a trade secret or privileged or confidential commercial or financial information; or

[(C) be detrimental to transportation safety.

[(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

[(3) Nothing in paragraph (1) shall be construed to authorize the designation of information as sensitive security information

(as defined in section 15.5 of title 49, Code of Federal Regulations)—

[(A) to conceal a violation of law, inefficiency, or administrative error;

[(B) to prevent embarrassment to a person, organization, or agency;

[(C) to restrain competition; or

[(D) to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.

[(4) Section 552a of title 5 shall not apply to disclosures that the Administrator may make from the systems of records of the Administration to any Federal law enforcement, intelligence, protective service, immigration, or national security official in order to assist the official receiving the information in the performance of official duties.

[(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.]

## TITLE 49. TRANSPORTATION

### SUBTITLE VII. AVIATION PROGRAMS

#### PART A. AIR COMMERCE AND SAFETY

##### SUBPART III. SAFETY

##### CHAPTER 449. SECURITY

##### SUBCHAPTER I. REQUIREMENTS

#### § 44901. Screening passengers and property

(a) IN GENERAL.—The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* shall provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. In the case of flights and flight segments originating in the United States, the screening shall take place before boarding and shall be carried out by a Federal Government employee (as defined in section 2105 of title 5 [United States Code]), except as otherwise provided in [section 44919 or 44920] *section 44920* and except for identifying passengers and baggage for screening under the CAPPS and known shipper programs and conducting positive bag-match programs.

(b) SUPERVISION OF SCREENING.—All screening of passengers and property at airports in the United States where screening is required under this section shall be supervised by uniformed Federal personnel of the Transportation Security Administration who shall have the power to order the dismissal of any individual performing such screening.

(c) CHECKED BAGGAGE.—A system must be in operation to screen all checked baggage at all airports in the United States as soon as

practicable [but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act].

(d) EXPLOSIVE DETECTION SYSTEMS.—

(1) IN GENERAL.—The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* shall take all necessary action to ensure that—

(A) explosives detection systems are deployed as soon as possible to ensure that all United States airports described in section 44903(c) have sufficient explosives detection systems to screen all checked baggage [no later than December 31, 2002], and that as soon as such systems are in place at an airport, all checked baggage at the airport is screened by those systems; and

(B) all systems deployed under subparagraph (A) are fully utilized; and

(C) if explosives detection equipment at an airport is unavailable, all checked baggage is screened by an alternative means.

[(2) DEADLINE.—

[(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosives detection systems required to be deployed under paragraph (1) at all airports where explosives detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

[(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosives detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

[(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

[(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

[(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

[(ii) the need to ensure that such installations and modifications are effective; and

[(iii) the feasibility and cost-effectiveness of deploying explosives detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

[(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within

14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

[(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

[(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosives detection systems; and

[(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosives detection systems required to be deployed under paragraph (1) have been deployed at that airport.

[(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.]

[(4)](2) PRECLEARANCE AIRPORTS.—

(A) IN GENERAL.—For a flight or flight segment originating at an airport outside the United States and traveling to the United States with respect to which checked baggage has been screened in accordance with an aviation security preclearance agreement between the United States and the country in which such airport is located, the [Assistant Secretary (Transportation Security Administration)] *Administrator of the Transportation Security Administration* may, in coordination with U.S. Customs and Border Protection, determine whether such baggage must be re-screened in the United States by an explosives detection system before such baggage continues on any additional flight or flight segment.

(B) AVIATION SECURITY PRECLEARANCE AGREEMENT DEFINED.—In this paragraph, the term “aviation security preclearance agreement” means an agreement that delineates and implements security standards and protocols that are determined by the [Assistant Secretary] *Administrator of the Transportation Security Administration*, in coordination with U.S. Customs and Border Protection, to be comparable to those of the United States and therefore sufficiently effective to enable passengers to deplane into sterile areas of airports in the United States.

(C) RESCREENING REQUIREMENT.—If the Administrator of the Transportation Security Administration determines that the government of a foreign country has not maintained security standards and protocols comparable to those of the United States at airports at which preclearance operations have been established in accordance with this paragraph, the Administrator shall ensure that Transportation Security Administration personnel rescreen passengers arriving from such airports and their

property in the United States before such passengers are permitted into sterile areas of airports in the United States.

(D) REPORT.—The [Assistant Secretary] *Administrator of the Transportation Security Administration* shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report on the re-screening of baggage under this paragraph. Each such report shall include the following for the year covered by the report:

(i) A list of airports outside the United States from which a flight or flight segment traveled to the United States for which the [Assistant Secretary] *Administrator* determined, in accordance with the authority under subparagraph (A), that checked baggage was not required to be re-screened in the United States by an explosives detection system before such baggage continued on an additional flight or flight segment.

(ii) The amount of Federal savings generated from the exercise of such authority.

(e) MANDATORY SCREENING WHERE EDS NOT YET AVAILABLE.—As soon as practicable [but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act] and until the requirements of subsection (b)(1)(A) are met, the [Under Secretary] *Administrator of the Transportation Security Administration* shall require alternative means for screening any piece of checked baggage that is not screened by an explosives detection system. Such alternative means may include 1 or more of the following:

(1) A bag-match program that ensures that no checked baggage is placed aboard an aircraft unless the passenger who checked the baggage is aboard the aircraft.

(2) Manual search.

(3) Search by canine explosives detection units in combination with other means.

(4) Other means or technology approved by the [Under Secretary] *Administrator*.

(f) CARGO DEADLINE.—A system must be in operation to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft in air transportation and intrastate air transportation as soon as practicable [after the date of enactment of the Aviation and Transportation Security Act].

(g) AIR CARGO ON PASSENGER AIRCRAFT.—

(1) IN GENERAL.—[Not later than 3 years after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the] *The Secretary of Homeland Security* shall establish a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

(2) MINIMUM STANDARDS.—The system referred to in paragraph (1) shall require, at a minimum, that equipment, tech-

nology, procedures, personnel, or other methods approved by the Administrator of the Transportation Security Administration, are used to screen cargo carried on passenger aircraft described in paragraph (1) to provide a level of security commensurate with the level of security for the screening of passenger checked baggage [as follows:

[(A) 50 percent of such cargo is so screened not later than 18 months after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.

[(B) 100 percent of such cargo is so screened not later than 3 years after such date of enactment.

[(3) REGULATIONS.—

[(A) INTERIM FINAL RULE.—The Secretary of Homeland Security may issue an interim final rule as a temporary regulation to implement this subsection without regard to the provisions of chapter 5 of title 5.

[(B) FINAL RULE.—

[(i) IN GENERAL.—If the Secretary issues an interim final rule under subparagraph (A), the Secretary shall issue, not later than one year after the effective date of the interim final rule, a final rule as a permanent regulation to implement this subsection in accordance with the provisions of chapter 5 of title 5.

[(ii) FAILURE TO ACT.—If the Secretary does not issue a final rule in accordance with clause (i) on or before the last day of the one-year period referred to in clause (i), the Secretary shall submit to the Committee on Homeland Security of the House of Representatives, Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Homeland Security and Governmental Affairs of the Senate a report explaining why the final rule was not timely issued and providing an estimate of the earliest date on which the final rule will be issued. The Secretary shall submit the first such report within 10 days after such last day and submit a report to the Committees containing updated information every 30 days thereafter until the final rule is issued.

[(iii) SUPERCEDING OF INTERIM FINAL RULE.—The final rule issued in accordance with this subparagraph shall supersede the interim final rule issued under subparagraph (A).]

(3) *REGULATIONS.*—*The Secretary of Homeland Security shall issue a final rule as a permanent regulation to implement this subsection in accordance with the provisions of chapter 5 of title 5.*

[(4) REPORT.—Not later than 1 year after the date of establishment of the system under paragraph (1), the Secretary shall submit to the Committees referred to in paragraph (3)(B)(ii) a report that describes the system.]

[(5)](4) *SCREENING DEFINED.*—In this subsection the term “screening” means a physical examination or non-intrusive methods of assessing whether cargo poses a threat to transportation security. Methods of screening include x-ray systems, ex-

plosives detection systems, explosives trace detection, explosives detection canine teams certified by the Transportation Security Administration, or a physical search together with manifest verification. The Administrator may approve additional methods to ensure that the cargo does not pose a threat to transportation security and to assist in meeting the requirements of this subsection. Such additional cargo screening methods shall not include solely performing a review of information about the contents of cargo or verifying the identity of a shipper of the cargo that is not performed in conjunction with other security methods authorized under this subsection, including whether a known shipper is registered in the known shipper database. Such additional cargo screening methods may include a program to certify the security methods used by shippers pursuant to paragraphs (1) and (2) and alternative screening methods pursuant to exemptions referred to in subsection (b) of section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(h) DEPLOYMENT OF ARMED PERSONNEL.—

(1) IN GENERAL.—The **【Under Secretary】** *Administrator of the Transportation Security Administration* shall order the deployment of law enforcement personnel authorized to carry firearms at each airport security screening location to ensure passenger safety and national security.

(2) MINIMUM REQUIREMENTS.—Except at airports required to enter into agreements under subsection (c), the **【Under Secretary】** *Administrator of the Transportation Security Administration* shall order the deployment of at least 1 law enforcement officer at each airport security screening location. At the 100 largest airports in the United States, in terms of annual passenger enplanements for the most recent calendar year for which data are available, the **【Under Secretary】** *Administrator* shall order the deployment of additional law enforcement personnel at airport security screening locations if the **【Under Secretary】** *Administrator* determines that the additional deployment is necessary to ensure passenger safety and national security.

(i) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The **【Under Secretary】** *Administrator of the Transportation Security Administration*—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the **【Under Secretary】** *Administrator* decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

(j) BLAST-RESISTANT CARGO CONTAINERS.—

(1) IN GENERAL.—**【Before January 1, 2008, the】** *The Administrator of the Transportation Security Administration* shall—

- (A) evaluate the results of the blast-resistant cargo container pilot program that was initiated before [the date of enactment of this subsection] *August 3, 2007*; and
- (B) prepare and distribute through the Aviation Security Advisory Committee to the appropriate Committees of Congress and air carriers a report on that evaluation which may contain nonclassified and classified sections.
- (2) ACQUISITION, MAINTENANCE, AND REPLACEMENT.—Upon completion and consistent with the results of the evaluation that paragraph (1)(A) requires, the Administrator shall—
  - (A) develop and implement a program, as the Administrator determines appropriate, to acquire, maintain, and replace blast-resistant cargo containers;
  - (B) pay for the program; and
  - (C) make available blast-resistant cargo containers to air carriers pursuant to paragraph (3).
- (3) DISTRIBUTION TO AIR CARRIERS.—The Administrator shall make available, beginning not later than July 1, 2008, blast-resistant cargo containers to air carriers for use on a risk managed basis as determined by the Administrator.
- (k) GENERAL AVIATION AIRPORT SECURITY PROGRAM.—
  - (1) IN GENERAL.—[Not later than one year after the date of enactment of this subsection, the] *The Administrator of the Transportation Security Administration shall—*
    - (A) develop a standardized threat and vulnerability assessment program for general aviation airports (as defined in section 47134(m)); and
    - (B) implement a program to perform such assessments on a risk-managed basis at general aviation airports.
  - (2) GRANT PROGRAM.—[Not later than 6 months after the date of enactment of this subsection, the] *The Administrator shall initiate and complete a study of the feasibility of a program, based on a risk-managed approach, to provide grants to operators of general aviation airports (as defined in section 47134(m)) for projects to upgrade security at such airports. If the Administrator determines that such a program is feasible, the Administrator shall establish such a program.*
  - (3) APPLICATION TO GENERAL AVIATION AIRCRAFT.—[Not later than 180 days after the date of enactment of this subsection, the] *The Administrator shall develop a risk-based system under which—*
    - (A) general aviation aircraft, as identified by the Administrator, in coordination with the Administrator of the Federal Aviation Administration, are required to submit passenger information and advance notification requirements for United States Customs and Border Protection before entering United States airspace; and
    - (B) such information is checked against appropriate databases.
  - (4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator of the Transportation Security Administration such sums as may be necessary to carry out paragraphs (2) and (3).
- (l) LIMITATIONS ON USE OF ADVANCED IMAGING TECHNOLOGY FOR SCREENING PASSENGERS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) ADVANCED IMAGING TECHNOLOGY.—The term “advanced imaging technology”—

(i) means a device used in the screening of passengers that creates a visual image of an individual showing the surface of the skin and revealing other objects on the body; and

(ii) may include devices using backscatter x-rays or millimeter waves and devices referred to as “whole-body imaging technology” or “body scanning machines”.

(B) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(i) the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Homeland Security of the House of Representatives.

(C) AUTOMATIC TARGET RECOGNITION SOFTWARE.—The term “automatic target recognition software” means software installed on an advanced imaging technology that produces a generic image of the individual being screened that is the same as the images produced for all other screened individuals.

(2) USE OF ADVANCED IMAGING TECHNOLOGY.—[Beginning June 1, 2012, the Assistant Secretary of Homeland Security (Transportation Security Administration)] *The Administrator of the Transportation Security Administration* shall ensure that any advanced imaging technology used for the screening of passengers under this section—

(A) is equipped with and employs automatic target recognition software; and

(B) complies with such other requirements as the [Assistant Secretary] *Administrator* determines necessary to address privacy considerations.

(3) EXTENSION.—

(A) IN GENERAL.—The [Assistant Secretary] *Administrator of the Transportation Security Administration* may extend the deadline specified in paragraph (2), if the [Assistant Secretary] *Administrator* determines that—

(i) an advanced imaging technology equipped with automatic target recognition software is not substantially as effective at screening passengers as an advanced imaging technology without such software; or

(ii) additional testing of such software is necessary.

(B) DURATION OF EXTENSIONS.—The [Assistant Secretary] *Administrator of the Transportation Security Administration* may issue one or more extensions under subparagraph (A). The duration of each extension may not exceed one year.

(4) REPORTS.—

(A) IN GENERAL.—Not later than [60 days after the deadline specified in paragraph (2), and not later than] 60 days after the date on which the [Assistant Secretary] *Ad-*

*ministrator of the Transportation Security Administration* issues any extension under paragraph (3), the **Assistant Secretary** *Administrator* shall submit to the appropriate congressional committees a report on the implementation of this subsection.

(B) ELEMENTS.—A report submitted under subparagraph

(A) shall include the following:

(i) A description of all matters the **Assistant Secretary** *Administrator of the Transportation Security Administration* considers relevant to the implementation of the requirements of this subsection.

(ii) The status of compliance by the Transportation Security Administration with such requirements.

(iii) If the Administration is not in full compliance with such requirements—

(I) the reasons for the noncompliance; and

(II) a timeline depicting when the **Assistant Secretary** *Administrator of the Transportation Security Administration* expects the Administration to achieve full compliance.

(C) SECURITY CLASSIFICATION.—To the greatest extent practicable, a report prepared under subparagraph (A) shall be submitted in an unclassified format. If necessary, the report may include a classified annex.

#### **§ 44902. Refusal to transport passengers and property**

(a) MANDATORY REFUSAL.—The **Under Secretary of Transportation for Security** *Administrator of the Transportation Security Administration* shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

(b) PERMISSIVE REFUSAL.—Subject to regulations of the **Under Secretary** *Administrator of the Transportation Security Administration*, an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.

(c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry passengers or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier is deemed to include an agreement that the passenger or property will not be carried if consent to search the passenger or property for a purpose referred to in this section is not given.

#### **§ 44903. Air transportation security**

(a) **DEFINITION** *DEFINITIONS*.—[In this section, “law enforcement personnel” means individuals—] *In this section:*

(1) *ADMINISTRATOR*.—The term “Administrator” means the *Administrator of the Transportation Security Administration*.

(2) *LAW ENFORCEMENT PERSONNEL.*—The term “law enforcement personnel” means individuals—

[(1)](A) authorized to carry and use firearms;

[(2)](B) vested with the degree of the police power of arrest the [Under Secretary of Transportation for Security] *Administrator* considers necessary to carry out this section; and

[(3)](C) identifiable by appropriate indicia of authority.

(b) *PROTECTION AGAINST VIOLENCE AND PIRACY.*—The [Under Secretary] *Administrator* shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy. When prescribing a regulation under this subsection, the [Under Secretary] *Administrator* shall—

(1) consult with the Secretary of Transportation, the Attorney General, the heads of other departments, agencies, and instrumentalities of the United States Government, and State and local authorities;

(2) consider whether a proposed regulation is consistent with—

(A) protecting passengers; and

(B) the public interest in promoting air transportation and intrastate air transportation;

(3) to the maximum extent practicable, require a uniform procedure for searching and detaining passengers and property to ensure—

(A) their safety; and

(B) courteous and efficient treatment by an air carrier, an agent or employee of an air carrier, and Government, State, and local law enforcement personnel carrying out this section; and

(4) consider the extent to which a proposed regulation will carry out this section.

(c) *SECURITY PROGRAMS.*—

(1) The [Under Secretary] *Administrator* shall prescribe regulations under subsection (b) of this section that require each operator of an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers. The regulations shall authorize the operator to use the services of qualified State, local, and private law enforcement personnel. When the [Under Secretary] *Administrator* decides, after being notified by an operator in the form the [Under Secretary] *Administrator* prescribes, that not enough qualified State, local, and private law enforcement personnel are available to carry out subsection (b), the [Under Secretary] *Administrator* may authorize the operator to use, on a reimbursable basis, personnel employed by the [Under Secretary] *Administrator*, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel. When deciding whether additional personnel are needed, the [Under Secretary] *Administrator* shall consider the number of passengers boarded at the airport, the

extent of anticipated risk of criminal violence or aircraft piracy at the airport or to the air carrier aircraft operations at the airport, and the availability of qualified State or local law enforcement personnel at the airport.

(2)(A) The **【Under Secretary】 Administrator** may approve a security program of an airport operator, or an amendment in an existing program, that incorporates a security program of an airport tenant (except an air carrier separately complying with part 108 or 129 of title 14, Code of Federal Regulations) having access to a secured area of the airport, if the program or amendment incorporates—

(i) the measures the tenant will use, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, to carry out the security requirements imposed by the **【Under Secretary】 Administrator** on the airport operator under the access control system requirements of section 107.14 of title 14, Code of Federal Regulations, or under other requirements of part 107 of title 14; and

(ii) the methods the airport operator will use to monitor and audit the tenant's compliance with the security requirements and provides that the tenant will be required to pay monetary penalties to the airport operator if the tenant fails to carry out a security requirement under a contractual provision or requirement imposed by the airport operator.

(B) If the **【Under Secretary】 Administrator** approves a program or amendment described in subparagraph (A) of this paragraph, the airport operator may not be found to be in violation of a requirement of this subsection or subsection (b) of this section when the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for the violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(C) **MAXIMUM USE OF CHEMICAL AND BIOLOGICAL WEAPON DETECTION EQUIPMENT.**—The Secretary of Transportation may require airports to maximize the use of technology and equipment that is designed to detect or neutralize potential chemical or biological weapons.

(3) **PILOT PROGRAMS.**—The Administrator shall establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control and other security protections for closed or secure areas of the airports. Such technology may include biometric or other technology that ensures only authorized access to secure areas.

(d) **AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE ARRESTS.**—With the approval of the Attorney General and the Secretary of State, the **【Secretary of Transportation】 Administrator** may authorize an individual who carries out air transportation security duties—

(1) to carry firearms; and

(2) to make arrests without warrant for an offense against the United States committed in the presence of the individual or for a felony under the laws of the United States, if the individual reasonably believes the individual to be arrested has committed or is committing a felony.

(e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The [Under Secretary] *Administrator* has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under section 46502 of this title from the moment all external doors of the aircraft are closed following boarding until those doors are opened to allow passengers to leave the aircraft. When requested by the [Under Secretary] *Administrator*, other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection.

(f) GOVERNMENT AND INDUSTRY CONSORTIA.—The [Under Secretary] *Administrator* may establish at airports such consortia of government and aviation industry representatives as the [Under Secretary] *Administrator* may designate to provide advice on matters related to aviation security and safety. Such consortia shall not be considered Federal advisory committees for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(g) IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.—

(1) ENFORCEMENT.—

(A) [UNDER SECRETARY] *ADMINISTRATOR* TO PUBLISH SANCTIONS.—The [Under Secretary] *Administrator* shall publish in the Federal Register a list of sanctions for use as guidelines in the discipline of employees for infractions of airport access control requirements. The guidelines shall incorporate a progressive disciplinary approach that relates proposed sanctions to the severity or recurring nature of the infraction and shall include measures such as remedial training, suspension from security-related duties, suspension from all duties without pay, and termination of employment.

(B) USE OF SANCTIONS.—Each airport operator, air carrier, and security screening company shall include the list of sanctions published by the [Under Secretary] *Administrator* in its security program. The security program shall include a process for taking prompt disciplinary action against an employee who commits an infraction of airport access control requirements.

(2) IMPROVEMENTS.—The [Under Secretary] *Administrator* shall—

(A) work with airport operators and air carriers to implement and strengthen existing controls to eliminate airport access control weaknesses;

(B) require airport operators and air carriers to develop and implement comprehensive and recurring training programs that teach employees their roles in airport security, the importance of their participation, how their performance will be evaluated, and what action will be taken if they fail to perform;

(C) require airport operators and air carriers to develop and implement programs that foster and reward compli-

ance with airport access control requirements and discourage and penalize noncompliance in accordance with guidelines issued by the [Under Secretary] *Administrator* to measure employee compliance;

(D) on an ongoing basis, assess and test for compliance with access control requirements, report annually findings of the assessments, and assess the effectiveness of penalties in ensuring compliance with security procedures and take any other appropriate enforcement actions when noncompliance is found;

(E) improve and better administer the [Under Secretary's] *Administrator's* security database to ensure its efficiency, reliability, and usefulness for identification of systemic problems and allocation of resources;

(F) improve the execution of the [Under Secretary's] *Administrator's* quality control program; and

(G) work with airport operators to strengthen access control points in secured areas (including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas) to ensure the security of passengers and aircraft and consider the deployment of biometric or similar technologies that identify individuals based on unique personal characteristics.

(h) IMPROVED AIRPORT PERIMETER ACCESS SECURITY.—

(1) IN GENERAL.—The [Under Secretary] *Administrator*, in consultation with the airport operator and law enforcement authorities, may order the deployment of such personnel at any secure area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier aircraft operations at the airport, or to meet national security concerns.

(2) SECURITY OF AIRCRAFT AND GROUND ACCESS TO SECURE AREAS.—In determining where to deploy such personnel, the [Under Secretary] *Administrator* shall consider the physical security needs of air traffic control facilities, parked aircraft, aircraft servicing equipment, aircraft supplies (including fuel), automobile parking facilities within airport perimeters or adjacent to secured facilities, and access and transition areas at airports served by other means of ground or water transportation.

(3) DEPLOYMENT OF FEDERAL LAW ENFORCEMENT PERSONNEL.—The [Secretary] *Secretary of Homeland Security* may enter into a memorandum of understanding or other agreement with the Attorney General or the head of any other appropriate Federal law enforcement agency to deploy Federal law enforcement personnel at an airport in order to meet aviation safety and security concerns.

(4) AIRPORT PERIMETER SCREENING.—The [Under Secretary] *Administrator*—

(A) shall require[, as soon as practicable after the date of enactment of this subsection,] screening or inspection of all individuals, goods, property, vehicles, and other equipment before entry into a secured area of an airport in the United States described in section 44903(c);

(B) shall prescribe specific requirements for such screening and inspection that will assure at least the same level of protection as will result from screening of passengers and their baggage;

(C) shall establish procedures to ensure the safety and integrity of—

(i) all persons providing services with respect to aircraft providing passenger air transportation or intrastate air transportation and facilities of such persons at an airport in the United States described in [section 44903(c)] *subsection (c)*;

(ii) all supplies, including catering and passenger amenities, placed aboard such aircraft, including the sealing of supplies to ensure easy visual detection of tampering; and

(iii) all persons providing such supplies and facilities of such persons;

(D) shall require vendors having direct access to the airfield and aircraft to develop security programs; and

(E) shall issue[, not later than March 31, 2005,] guidance for the use of biometric or other technology that positively verifies the identity of each employee and law enforcement officer who enters a secure area of an airport.

(5) USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL SYSTEMS.—In issuing guidance under paragraph (4)(E), the [Assistant Secretary of Homeland Security (Transportation Security Administration)] *Administrator* in consultation with representatives of the aviation industry, the biometric identifier industry, and the National Institute of Standards and Technology, shall establish, at a minimum—

(A) comprehensive technical and operational system requirements and performance standards for the use of biometric identifier technology in airport access control systems (including airport perimeter access control systems) to ensure that the biometric identifier systems are effective, reliable, and secure;

(B) a list of products and vendors that meet the requirements and standards set forth in subparagraph (A);

(C) procedures for implementing biometric identifier systems—

(i) to ensure that individuals do not use an assumed identity to enroll in a biometric identifier system; and

(ii) to resolve failures to enroll, false matches, and false non-matches; and

(D) best practices for incorporating biometric identifier technology into airport access control systems in the most effective manner, including a process to best utilize existing airport access control systems, facilities, and equipment and existing data networks connecting airports.

(6) USE OF BIOMETRIC TECHNOLOGY FOR ARMED LAW ENFORCEMENT TRAVEL.—

(A) IN GENERAL.—[Not later than 18 months after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the] *The* Secretary of

Homeland Security, in consultation with the Attorney General, shall—

(i) implement this **【section】** *paragraph* by publication in the Federal Register; and

(ii) establish a national registered armed law enforcement program, that shall be Federally managed, for law enforcement officers needing to be armed when traveling by commercial aircraft.

(B) PROGRAM REQUIREMENTS.—The program shall—

(i) establish a credential or a system that incorporates biometric technology and other applicable technologies;

(ii) establish a system for law enforcement officers who need to be armed when traveling by commercial aircraft on a regular basis and for those who need to be armed during temporary travel assignments;

(iii) comply with other uniform credentialing initiatives, including the Homeland Security Presidential Directive 12;

(iv) apply to all Federal, State, local, tribal, and territorial government law enforcement agencies; and

(v) establish a process by which the travel credential or system may be used to verify the identity, using biometric technology, of a Federal, State, local, tribal, or territorial law enforcement officer seeking to carry a weapon on board a commercial aircraft, without unnecessarily disclosing to the public that the individual is a law enforcement officer.

(C) PROCEDURES.—In establishing the program, the **【Secretary】** *Secretary of Homeland Security* shall develop procedures—

(i) to ensure that a law enforcement officer of a Federal, State, local, tribal, or territorial government flying armed has a specific reason for flying armed and the reason is within the scope of the duties of such officer;

(ii) to preserve the anonymity of the armed law enforcement officer;

(iii) to resolve failures to enroll, false matches, and false nonmatches relating to the use of the law enforcement travel credential or system;

(iv) to determine the method of issuance of the biometric credential to law enforcement officers needing to be armed when traveling by commercial aircraft;

(v) to invalidate any law enforcement travel credential or system that is lost, stolen, or no longer authorized for use;

(vi) to coordinate the program with the Federal Air Marshal Service, including the force multiplier program of the Service; and

(vii) to implement a phased approach to launching the program, addressing the immediate needs of the relevant Federal agent population before expanding to other law enforcement populations.

(7) DEFINITIONS.—In this subsection, the following definitions apply:

(A) BIOMETRIC IDENTIFIER INFORMATION.—The term “biometric identifier information” means the distinct physical or behavioral characteristics of an individual that are used for unique identification, or verification of the identity, of an individual.

(B) BIOMETRIC IDENTIFIER.—The term “biometric identifier” means a technology that enables the automated identification, or verification of the identity, of an individual based on biometric information.

(C) FAILURE TO ENROLL.—The term “failure to enroll” means the inability of an individual to enroll in a biometric identifier system due to an insufficiently distinctive biometric sample, the lack of a body part necessary to provide the biometric sample, a system design that makes it difficult to provide consistent biometric identifier information, or other factors.

(D) FALSE MATCH.—The term “false match” means the incorrect matching of one individual’s biometric identifier information to another individual’s biometric identifier information by a biometric identifier system.

(E) FALSE NON-MATCH.—The term “false non-match” means the rejection of a valid identity by a biometric identifier system.

(F) SECURE AREA OF AN AIRPORT.—The term “secure area of an airport” means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).

(i) AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.—

(1) IN GENERAL.—If the [Under Secretary] *Administrator*, after receiving the recommendations of the National Institute of Justice, determines, with the approval of the Attorney General and the Secretary of State, that it is appropriate and necessary and would effectively serve the public interest in avoiding air piracy, the [Under Secretary] *Administrator* may authorize members of the flight deck crew on any aircraft providing air transportation or intrastate air transportation to carry a less-than-lethal weapon while the aircraft is engaged in providing such transportation.

(2) USAGE.—If the [Under Secretary] *Administrator* grants authority under paragraph (1) for flight deck crew members to carry a less-than-lethal weapon while engaged in providing air transportation or intrastate air transportation, the [Under Secretary] *Administrator* shall—

(A) prescribe rules requiring that any such crew member be trained in the proper use of the weapon; and

(B) prescribe guidelines setting forth the circumstances under which such weapons may be used.

(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If[, after the date of enactment of this paragraph,] the [Under Secretary] *Administrator* receives a request from an air carrier for authorization to allow pilots of the air carrier

to carry less-than-lethal weapons, the **Under Secretary** Administrator shall respond to that request within 90 days.

(j) **SHORT-TERM ASSESSMENT AND DEPLOYMENT OF EMERGING SECURITY TECHNOLOGIES AND PROCEDURES.**—

**[(1) IN GENERAL.**—The Under Secretary of Transportation for Security shall recommend to airport operators, within 6 months after the date of enactment of the Aviation and Transportation Security Act, commercially available measures or procedures to prevent access to secure airport areas by unauthorized persons. As part of the 6-month assessment, the Under Secretary for Transportation Security shall—

**[(A)** review the effectiveness of biometrics systems currently in use at several United States airports, including San Francisco International;

**[(B)** review the effectiveness of increased surveillance at access points;

**[(C)** review the effectiveness of card- or keypad-based access systems;

**[(D)** review the effectiveness of airport emergency exit systems and determine whether those that lead to secure areas of the airport should be monitored or how breaches can be swiftly responded to; and

**[(E)** specifically target the elimination of the “piggy-backing” phenomenon, where another person follows an authorized person through the access point.

**[The 6-month assessment shall include a 12-month deployment strategy for currently available technology at all category X airports, as defined in the Federal Aviation Administration approved air carrier security programs required under part 108 of title 14, Code of Federal Regulations. Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall conduct a review of reductions in unauthorized access at these airports.]**

*(1) IN GENERAL.—The Administrator shall periodically recommend to airport operators commercially available measures or procedures to prevent access to secure airport areas by unauthorized persons.*

**(2) [COMPUTER-ASSISTED PASSENGER PRESCREENING SYSTEM] SECURE FLIGHT PROGRAM.**—

**(A) IN GENERAL.**—The **[Secretary of Transportation]** Administrator shall ensure that the **[Computer-Assisted Passenger Prescreening System]** *Secure Flight program*, or any successor **[system]** *program*—

(i) is used to evaluate all passengers before they board an aircraft; and

(ii) includes procedures to ensure that individuals selected by the **[system]** *program* and their carry-on and checked baggage are adequately screened.

**(B) MODIFICATIONS.**—The **[Secretary of Transportation]** Administrator may modify any requirement under the **[Computer-Assisted Passenger Prescreening System]** *Secure Flight program* for flights that originate and terminate within the same State, if the **[Secretary]** Administrator determines that—

(i) the State has extraordinary air transportation needs or concerns due to its isolation and dependence on air transportation; and

(ii) the routine characteristics of passengers, given the nature of the market, regularly triggers primary selectee status.

(C) ADVANCED AIRLINE PASSENGER PRESCREENING.—

(i) COMMENCEMENT OF TESTING.—[Not later than January 1, 2005, the Assistant Secretary of Homeland Security (Transportation Security Administration), or the designee of the Assistant Secretary,] *The Administrator* shall commence testing of an advanced passenger prescreening system that will allow the Department of Homeland Security to assume the performance of comparing passenger information, as defined by the [Assistant Secretary] *Administrator*, to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government.

(ii) ASSUMPTION OF FUNCTION.—[Not later than 180 days after completion of testing under clause (i), the] *The* [Assistant Secretary] *Administrator*, or the designee of the [Assistant Secretary] *Administrator*, shall begin to assume the performance of the passenger prescreening function of comparing passenger information to the automatic selectee and no fly lists and utilize all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government in performing that function.

(iii) REQUIREMENTS.—In assuming performance of the function under clause (ii), the [Assistant Secretary] *Administrator* shall—

(I) establish a procedure to enable airline passengers, who are delayed or prohibited from boarding a flight because the advanced passenger prescreening system determined that they might pose a security threat, to appeal such determination and correct information contained in the system;

(II) ensure that Federal Government databases that will be used to establish the identity of a passenger under the system will not produce a large number of false positives;

(III) establish an internal oversight board to oversee and monitor the manner in which the system is being implemented;

(IV) establish sufficient operational safeguards to reduce the opportunities for abuse;

(V) implement substantial security measures to protect the system from unauthorized access;

(VI) adopt policies establishing effective oversight of the use and operation of the system; and

(VII) ensure that there are no specific privacy concerns with the technological architecture of the system.

(iv) PASSENGER INFORMATION.—[Not later than 180 days after] *After* the completion of the testing of the advanced passenger prescreening system, the [Assistant Secretary] *Administrator*, by order or interim final rule—

(I) shall require air carriers to supply to the [Assistant Secretary] *Administrator* the passenger information needed to begin implementing the advanced passenger prescreening system; and

(II) shall require entities that provide systems and services to air carriers in the operation of air carrier reservations systems to provide to air carriers passenger information in possession of such entities, but only to the extent necessary to comply with subclause (I).

(v) INCLUSION OF DETAINEES ON NO FLY LIST.—The [Assistant Secretary] *Administrator*, in coordination with the Terrorist Screening Center, shall include on the No Fly List any individual who was a detainee held at the Naval Station, Guantanamo Bay, Cuba, unless the President certifies in writing to Congress that the detainee poses no threat to the United States, its citizens, or its allies. For purposes of this clause, the term “detainee” means an individual in the custody or under the physical control of the United States as a result of armed conflict.

(D) SCREENING OF EMPLOYEES AGAINST WATCHLIST.—The [Assistant Secretary of Homeland Security (Transportation Security Administration)] *Administrator*, in coordination with the Secretary of Transportation and the Administrator of the Federal Aviation Administration, shall ensure that individuals are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government before—

(i) being certificated by the Federal Aviation Administration;

(ii) being granted unescorted access to the secure area of an airport; or

(iii) being granted unescorted access to the air operations area (as defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section) of an airport.

(E) AIRCRAFT CHARTER CUSTOMER AND LESSEE PRESCREENING.—

(i) IN GENERAL.—[Not later than 90 days after the date on which the Assistant Secretary assumes the performance of the advanced passenger pre screening function under subparagraph (C)(ii), the] *The* [Assistant Secretary] *Administrator* shall establish a process by which operators of aircraft to be used in charter air transportation with a maximum takeoff weight greater than 12,500 pounds and lessors of aircraft with a max-

imum takeoff weight greater than 12,500 pounds may—

(I) request the Department of Homeland Security to use the advanced passenger pre screening system to compare information about any individual seeking to charter an aircraft with a maximum takeoff weight greater than 12,500 pounds, any passenger proposed to be transported aboard such aircraft, and any individual seeking to lease an aircraft with a maximum takeoff weight greater than 12,500 pounds to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government; and

(II) refuse to charter or lease an aircraft with a maximum takeoff weight greater than 12,500 pounds to or transport aboard such aircraft any persons identified on such watch list.

(ii) REQUIREMENTS.—The requirements of subparagraph (C)(iii) shall apply to this subparagraph.

(iii) NO FLY AND AUTOMATIC SELECTEE LISTS.—The Secretary of Homeland Security, in consultation with the Terrorist Screening Center, shall design and review, as necessary, guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the no fly and automatic selectee lists.

(F) APPLICABILITY.—Section 607 of the Vision 100--Century of Aviation Reauthorization Act (49 U.S.C. 44903 note; 117 Stat. 2568) shall not apply to the advanced passenger prescreening system established under subparagraph (C).

(G) APPEAL PROCEDURES.—

(i) IN GENERAL.—The **【Assistant Secretary】 Administrator** shall establish a timely and fair process for individuals identified as a threat under one or more of subparagraphs (C), (D), and (E) to appeal to the Transportation Security Administration the determination and correct any erroneous information.

(ii) RECORDS.—The process shall include the establishment of a method by which the **【Assistant Secretary】 Administrator** will be able to maintain a record of air passengers and other individuals who have been misidentified and have corrected erroneous information. To prevent repeated delays of misidentified passengers and other individuals, the Transportation Security Administration record shall contain information determined by the **【Assistant Secretary】 Administrator** to authenticate the identity of such a passenger or individual.

(H) DEFINITION.—In this paragraph, the term “secure area of an airport” means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).

(k) \* \* \*

(l) AIR CHARTER PROGRAM.—

(1) IN GENERAL.—The [Under Secretary for Border and Transportation Security of the Department of Homeland Security] *Administrator* shall implement an aviation security program for charter air carriers (as defined in section 40102(a)) with a maximum certificated takeoff weight of more than 12,500 pounds.

(2) EXEMPTION FOR ARMED FORCES CHARTERS.—

(A) IN GENERAL.—Paragraph (1) and the other requirements of this chapter do not apply to passengers and property carried by aircraft when employed to provide charter transportation to members of the armed forces.

(B) SECURITY PROCEDURES.—The Secretary of Defense, in consultation with the Secretary of Homeland Security and the Secretary of Transportation, shall establish security procedures relating to the operation of aircraft when employed to provide charter transportation to members of the armed forces to or from an airport described in section 44903(c).

(C) ARMED FORCES DEFINED.—In this paragraph, the term “armed forces” has the meaning given that term by section 101(a)(4) of title 10.

(m) SECURITY SCREENING FOR MEMBERS OF THE ARMED FORCES.—

(1) IN GENERAL.—The [Assistant Secretary of Homeland Security (Transportation Security Administration)] *Administrator*, in consultation with the Department of Defense, shall develop and implement a plan to provide expedited security screening services for a member of the armed forces, and, to the extent possible, any accompanying family member, if the member of the armed forces, while in uniform, presents documentation indicating official orders for air transportation departing from a primary airport (as defined in section 47102).

(2) PROTOCOLS.—In developing the plan, the [Assistant Secretary] *Administrator* shall consider—

(A) leveraging existing security screening models used to reduce passenger wait times;

(B) establishing standard guidelines for the screening of military uniform items, including combat boots; and

(C) incorporating any new screening protocols into an existing trusted passenger program, as established pursuant to section 109(a)(3) of the Aviation and Transportation Security Act (49 U.S.C. 114 note), or into the development of any new credential or system that incorporates biometric technology and other applicable technologies to verify the identity of individuals traveling in air transportation.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect the authority of the [Assistant Secretary] *Administrator* to require additional screening of a member of the armed forces if intelligence or law enforcement information indicates that additional screening is necessary.

(4) REPORT TO CONGRESS.—The [Assistant Secretary] *Administrator* shall submit to the appropriate committees of Congress a report on the implementation of the plan.

## (n) PASSENGER EXIT POINTS FROM STERILE AREA.—

(1) IN GENERAL.—The Secretary of Homeland Security shall ensure that the Transportation Security Administration is responsible for monitoring passenger exit points from the sterile area of airports at which the Transportation Security Administration provided such monitoring as of December 1, 2013.

(2) STERILE AREA DEFINED.—In this section, the term “sterile area” has the meaning given that term in section 1540.5 of title 49, Code of Federal Regulations (or any corresponding similar regulation or ruling).

**§ 44904. Domestic air transportation system security**

(a) ASSESSING THREATS.—The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* and the Director of the Federal Bureau of Investigation jointly shall assess current and potential threats to the domestic air transportation system. The assessment shall include consideration of the extent to which there are individuals with the capability and intent to carry out terrorist or related unlawful acts against that system and the ways in which those individuals might carry out those acts. The [Under Secretary] *Administrator of the Transportation Security Administration* and the Director jointly shall decide on and carry out the most effective method for continuous analysis and monitoring of security threats to that system.

(b) ASSESSING SECURITY.—In coordination with the Director, the [Under Secretary] *Administrator of the Transportation Security Administration* shall carry out periodic threat and vulnerability assessments on security at each airport that is part of the domestic air transportation system. Each assessment shall include consideration of—

- (1) the adequacy of security procedures related to the handling and transportation of checked baggage and cargo;
- (2) space requirements for security personnel and equipment;
- (3) separation of screened and unscreened passengers, baggage, and cargo;
- (4) separation of the controlled and uncontrolled areas of airport facilities; and
- (5) coordination of the activities of security personnel of the Transportation Security Administration, the United States Customs Service, the Immigration and Naturalization Service, and air carriers, and of other law enforcement personnel.

(c) MODAL SECURITY PLAN FOR AVIATION.—In addition to the requirements set forth in subparagraphs (B) through (F) of [section 114(t)(3)] *section 114(s)(3)*, the modal security plan for aviation prepared under [section 114(t)] *section 114(s)* shall—

- (1) establish a damage mitigation and recovery plan for the aviation system in the event of a terrorist attack; and
- (2) include a threat matrix document that outlines each threat to the United States civil aviation system and the corresponding layers of security in place to address such threat.

(d) OPERATIONAL CRITERIA.—[Not later than 90 days after the date of the submission of the National Strategy for Transportation Security under section 114(t)(4)(A), the Assistant Secretary of Homeland Security (Transportation Security Administration)] *The Administrator of the Transportation Security Administration* shall

issue operational criteria to protect airport infrastructure and operations against the threats identified in the plans prepared under [section 114(t)(1)] *section 114(s)(1)* and shall approve best practices guidelines for airport assets.

(e) IMPROVING SECURITY.—The [Under Secretary] *Administrator of the Transportation Security Administration* shall take necessary actions to improve domestic air transportation security by correcting any deficiencies in that security discovered in the assessments, analyses, and monitoring carried out under this section.

#### **§ 44905. Information about threats to civil aviation**

(a) PROVIDING INFORMATION.—Under guidelines the [Secretary of Transportation] *Administrator of the Transportation Security Administration* prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the [Secretary.] *Administrator*.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew of a particular flight or series of flights, the [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* shall cancel the flight or series of flights.

(c) GUIDELINES ON PUBLIC NOTICE.—

(1) The President shall develop guidelines for ensuring that public notice is provided in appropriate cases about threats to civil aviation. The guidelines shall identify officials responsible for—

(A) deciding, on a case-by-case basis, if public notice of a threat is in the best interest of the United States and the traveling public;

(B) ensuring that public notice is provided in a timely and effective way, including the use of a toll-free telephone number; and

(C) canceling the departure of a flight or series of flights under subsection (b) of this section.

(2) The guidelines shall provide for consideration of—

(A) the specificity of the threat;

(B) the credibility of intelligence information related to the threat;

(C) the ability to counter the threat effectively;

(D) the protection of intelligence information sources and methods;

(E) cancellation, by an air carrier or the [Under Secretary] *Administrator of the Transportation Security Administration*, of a flight or series of flights instead of public notice;

(F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and

(G) other factors the [Under Secretary] *Administrator of the Transportation Security Administration* considers appropriate.

(d) **GUIDELINES ON NOTICE TO CREWS.**—The [Under Secretary] *Administrator of the Transportation Security Administration* shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

(e) \* \* \*

(f) **RESTRICTING ACCESS TO INFORMATION.**—In cooperation with the departments, agencies, and instrumentalities of the Government that collect, receive, and analyze intelligence information related to aviation security, the [Under Secretary] *Administrator of the Transportation Security Administration* shall develop procedures to minimize the number of individuals who have access to information about threats. However, a restriction on access to that information may be imposed only if the restriction does not diminish the ability of the Government to carry out its duties and powers related to aviation security effectively, including providing notice to the public and flight and cabin crews under this section.

(g) \* \* \*

#### **§ 44906. Foreign air carrier security programs**

The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the [Under Secretary] *Administrator*. The [Under Secretary] *Administrator* shall not approve a security program of a foreign air carrier under section 129.25, or any successor regulation, unless the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the [Under Secretary] *Administrator* requires air carriers serving the same airports to adhere to. The foregoing requirement shall not be interpreted to limit the ability of the [Under Secretary] *Administrator* to impose additional security measures on a foreign air carrier or an air carrier when the [Under Secretary] *Administrator* determines that a specific threat warrants such additional measures. The [Under Secretary] *Administrator* shall prescribe regulations to carry out this section.

#### **§ 44908. Travel advisory and suspension of foreign assistance**

(a) **TRAVEL ADVISORIES.**—On being notified by the [Secretary of Transportation] *Administrator of the Transportation Security Administration* that the [Secretary of Transportation] *Administrator of the Transportation Security Administration* has decided under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the [safety or] security of passengers, aircraft, or crew traveling to or from a foreign airport that the Secretary of Transportation has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

- (1) immediately shall issue a travel advisory for that airport; and
- (2) shall publicize the advisory widely.

(b) **SUSPENDING ASSISTANCE.**—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) **ACTIONS NO LONGER REQUIRED.**—An action required under this section is no longer required only if the [Secretary of Transportation] *Administrator of the Transportation Security Administration* has made a decision as provided under section 44907(d)(4) of this title. [The Secretary] *The Administrator* shall notify Congress when the action is no longer required to be taken.

#### **§ 44909. Passenger manifests**

(a) **AIR CARRIER REQUIREMENTS.**—

(1) [Not later than March 16, 1991, the] *The Secretary of Transportation* shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest should include the following information:

(A) the full name of each passenger.

(B) the passport number of each passenger, if required for travel.

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) \* \* \*

(c) **FLIGHTS IN FOREIGN AIR TRANSPORTATION TO THE UNITED STATES.**—

(1) **IN GENERAL.**—[Not later than 60 days after the date of enactment of the Aviation and Transportation Security Act, each] *Each* air carrier and foreign air carrier operating a passenger flight in foreign air transportation to the United States shall provide to the Commissioner of Customs by electronic transmission a passenger and crew manifest containing the information specified in paragraph (2). Carriers may use the advanced passenger information system established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) to provide the information required by the preceding sentence.

(2) INFORMATION.—A passenger and crew manifest for a flight required under paragraph (1) shall contain the following information:

- (A) The full name of each passenger and crew member.
- (B) The date of birth and citizenship of each passenger and crew member.
- (C) The sex of each passenger and crew member.
- (D) The passport number and country of issuance of each passenger and crew member if required for travel.
- (E) The United States visa number or resident alien card number of each passenger and crew member, as applicable.
- (F) Such other information as the **Under Secretary** *Administrator of the Transportation Security Administration*, in consultation with the Commissioner of Customs, determines is reasonably necessary to ensure aviation safety.

(3) PASSENGER NAME RECORDS.—The carriers shall make passenger name record information available to the Customs Service upon request.

(4) TRANSMISSION OF MANIFEST.—Subject to paragraphs (5) and (6), a passenger and crew manifest required for a flight under paragraph (1) shall be transmitted to the Customs Service in advance of the aircraft landing in the United States in such manner, time, and form as the Customs Service prescribes.

(5) TRANSMISSION OF MANIFESTS TO OTHER FEDERAL AGENCIES.—Upon request, information provided to the **Under Secretary** *Administrator of the Transportation Security Administration* or the Customs Service under this subsection may be shared with other Federal agencies for the purpose of protecting national security.

(6) PRESCREENING INTERNATIONAL PASSENGERS.—

(A) IN GENERAL.—**Not later than 60 days after date of enactment of this paragraph, the** *The* Secretary of Homeland Security, or the designee of the Secretary, shall issue a notice of proposed rulemaking that will allow the Department of Homeland Security to compare passenger information for any international flight to or from the United States against the consolidated and integrated terrorist watchlist maintained by the Federal Government before departure of the flight.

(B) APPEAL PROCEDURES.—

(i) IN GENERAL.—The Secretary of Homeland Security shall establish a timely and fair process for individuals identified as a threat under subparagraph (A) to appeal to the Department of Homeland Security the determination and correct any erroneous information.

(ii) RECORDS.—The process shall include the establishment of a method by which **the Secretary will** *the Secretary of Homeland Security will* be able to maintain a record of air passengers and other individuals who have been misidentified and have corrected erroneous information. To prevent repeated delays of misidentified passengers and other individuals, the

Department of Homeland Security record shall contain information determined by [the Secretary to] *the Secretary of Homeland Security* to authenticate the identity of such a passenger or individual.

#### § 44911. Intelligence

(a) DEFINITION.—In this section, “intelligence community” means the intelligence and intelligence-related activities of the following units of the United States Government:

- (1) the Department of State.
- (2) the Department of Defense.
- (3) the Department of the Treasury.
- (4) the Department of Energy.
- (5) the Departments of the Army, Navy, and Air Force.
- (6) the Central Intelligence Agency.
- (7) the National Security Agency.
- (8) the Defense Intelligence Agency.
- (9) the Federal Bureau of Investigation.
- (10) the Drug Enforcement Administration.

(b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about terrorism are made available, as appropriate, to the heads of other units in the intelligence community, the Secretary of Transportation, and the [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration*.

(c) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the units in the intelligence community shall place greater emphasis on strategic intelligence efforts by establishing a unit for strategic planning on terrorism.

(d) DESIGNATION OF INTELLIGENCE OFFICER.—At the [request of the Secretary] *request of the Secretary of Homeland Security*, the Director of Central Intelligence shall designate at least one intelligence officer of the Central Intelligence Agency to serve in a senior position in the Office of the Secretary.

(e) WRITTEN WORKING AGREEMENTS.—The heads of units in the intelligence community, the [Secretary, and the Under Secretary] *Secretary of Homeland Security, and the Administrator of the Transportation Security Administration* shall review and, as appropriate, revise written working agreements between the [intelligence community and the Under Secretary] *intelligence community and the Administrator of the Transportation Security Administration*.

#### § 44912. Research and development

(a) PROGRAM REQUIREMENT.—

- (1) The [Under Secretary of Transportation for Security] *Administrator* shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. The program shall provide for developing and having in place[, not later than November 16, 1993,] new equipment and procedures necessary to meet the technological challenges presented by terrorism. The program shall include

research on, and development of, technological improvements and ways to enhance human performance.

(2) In designing and carrying out the program established under this subsection, the **【Under Secretary】 Administrator** shall—

(A) consult and coordinate activities with other departments, agencies, and instrumentalities of the United States Government doing similar research;

(B) identify departments, agencies, and instrumentalities that would benefit from that research; and

(C) seek cost-sharing agreements with those departments, agencies, and instrumentalities.

(3) In carrying out the program established under this subsection, the **【Under Secretary】 Administrator** shall review and consider the annual reports the Secretary of Transportation submits to Congress on transportation security and intelligence.

(4)(A) In carrying out the program established under this subsection, the Administrator shall designate an individual to be responsible for engineering, research, and development with respect to security technology under the program.

(B) The individual designated under subparagraph (A) shall use appropriate systems engineering and risk management models in making decisions regarding the allocation of funds for engineering, research, and development with respect to security technology under the program.

(C) The individual designated under subparagraph (A) shall, on an annual basis, submit to the **【Research, Engineering and Development Advisory Committee】 Administrator** a report on activities under this paragraph during the preceding year. Each report shall include, for the year covered by such report, information on—

(i) progress made in engineering, research, and development with respect to security technology;

(ii) the allocation of funds for engineering, research, and development with respect to security technology; and

(iii) engineering, research, and development with respect to any technologies drawn from other agencies, including the rationale for engineering, research, and development with respect to such technologies.

(5) The **【Under Secretary】 Administrator** may—

(A) make grants to institutions of higher learning and other appropriate research facilities with demonstrated ability to carry out research described in paragraph (1) of this subsection, and fix the amounts and terms of the grants; and

(B) make cooperative agreements with governmental authorities the **【Under Secretary】 Administrator** decides are appropriate.

(b) REVIEW OF THREATS.—

(1) The **【Under Secretary】 Administrator** shall periodically review threats to civil aviation, with particular focus on—

(A) a comprehensive systems analysis (employing vulnerability analysis, threat attribute definition, and technology roadmaps) of the civil aviation system, including—

(i) the destruction, commandeering, or diversion of civil aircraft or the use of civil aircraft as a weapon; and

(ii) the disruption of civil aviation service, including by cyber attack;

(B) explosive material that presents the most significant threat to civil aircraft;

(C) the minimum amounts, configurations, and types of explosive material that can cause, or would reasonably be expected to cause, catastrophic damage to aircraft in air transportation;

(D) the amounts, configurations, and types of explosive material that can be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(E) the potential release of chemical, biological, or similar weapons or devices either within an aircraft or within an airport;

(F) the feasibility of using various ways to minimize damage caused by explosive material that cannot be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(G) the ability to screen passengers, carry-on baggage, checked baggage, and cargo; and

(H) the technologies that might be used in the future to attempt to destroy or otherwise threaten commercial aircraft and the way in which those technologies can be countered effectively.

(2) The **Under Secretary** *Administrator* shall use the results of the review under this subsection to develop the focus and priorities of the program established under subsection (a) of this section.

(c) **SCIENTIFIC ADVISORY PANEL.**—

(1) The Administrator shall establish a scientific advisory panel<sup>1</sup>, as a subcommittee of the Research, Engineering, and Development Advisory Committee,<sup>2</sup> to review, comment on, advise the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft, commercial aviation facilities, commercial aviation personnel and passengers, and other components of the commercial aviation system by the next generation of terrorist weapons.

(2)(A) The advisory panel shall consist of individuals who have scientific and technical expertise in—

(i) the development and testing of effective explosive detection systems;

(ii) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective explosive detection technology must be capable of detecting;

- (iii) technologies involved in minimizing airframe damage to aircraft from explosives; and
- (iv) other scientific and technical areas the Administrator considers appropriate.

(B) In appointing individuals to the advisory panel, the Administrator should consider individuals from academia and the national laboratories, as appropriate.

(3) The Administrator shall organize the advisory panel into teams capable of undertaking the review of policies and technologies upon request.

(4) [Not later than 90 days after the date of the enactment of the Aviation and Transportation Security Act, and every two years thereafter,] *Biennially*, the Administrator shall review the composition of the advisory panel in order to ensure that the expertise of the individuals on the panel is suited to the current and anticipated duties of the panel.

(d) *SECURITY AND RESEARCH AND DEVELOPMENT ACTIVITIES.*—

(1) *IN GENERAL.*—*The Administrator shall conduct research (including behavioral research) and development activities appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence, aircraft piracy, and terrorism and to ensure security.*

(2) *DISCLOSURE.*—

(A) *IN GENERAL.*—*Notwithstanding section 552 of title 5, the Administrator shall prescribe regulations prohibiting disclosure of information obtained or developed in ensuring security under this title if the Secretary of Homeland Security decides disclosing the information would—*

- (i) *be an unwarranted invasion of personal privacy;*
- (ii) *reveal a trade secret or privileged or confidential commercial or financial information; or*
- (iii) *be detrimental to transportation safety.*

(B) *INFORMATION TO CONGRESS.*—*Subparagraph (A) does not authorize information to be withheld from a committee of Congress authorized to have the information.*

(C) *RULE OF CONSTRUCTION.*—*Nothing in subparagraph (A) shall be construed to authorize the designation of information as sensitive security information (as defined in section 15.5 of title 49, Code of Federal Regulations)—*

- (i) *to conceal a violation of law, inefficiency, or administrative error;*
- (ii) *to prevent embarrassment to a person, organization, or agency;*
- (iii) *to restrain competition; or*
- (iv) *to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.*

(D) *PRIVACY ACT.*—*Section 552a of title 5 shall not apply to disclosures that the Administrator of the Transportation Security Administration may make from the systems of records of the Transportation Security Administration to any Federal law enforcement, intelligence, protective serv-*

*ice, immigration, or national security official in order to assist the official receiving the information in the performance of official duties.*

(3) *TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the Administrator may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.*

(e) *DEFINITION OF ADMINISTRATOR.—In this section, the term “Administrator” means the Administrator of the Transportation Security Administration.*

### **§ 44913. Explosive detection**

(a) **DEPLOYMENT AND PURCHASE OF EQUIPMENT.—**

(1) A deployment or purchase of explosive detection equipment under section 108.7(b)(8) or 108.20 of title 14, Code of Federal Regulations, or similar regulation is required only if the **【Under Secretary of Transportation for Security】 Administrator of the Transportation Security Administration** certifies that the equipment alone, or as part of an integrated system, can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall base the certification on the results of tests conducted under protocols developed in consultation with expert scientists outside of the Transportation Security Administration. Those tests shall be completed not later than April 16, 1992.

【(2) Before completion of the tests described in paragraph (1) of this subsection, but not later than April 16, 1992, the **【Under Secretary】 Administrator** may require deployment of explosive detection equipment described in paragraph (1) if the **【Under Secretary】 Administrator** decides that deployment will enhance aviation security significantly. In making that decision, the **【Under Secretary】 Administrator** shall consider factors such as the ability of the equipment alone, or as part of an integrated system, to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The **【Under Secretary】 Administrator** shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of a deployment decision made under this paragraph.】

【(3)】(2) Until such time as the **【Under Secretary】 Administrator** determines that equipment certified under paragraph (1) is commercially available and has successfully completed operational testing as provided in paragraph (1), the **【Under Secretary】 Administrator** shall facilitate the deployment of such approved commercially available explosive detection devices as the **【Under Secretary】 Administrator** determines will enhance aviation security significantly. The **【Under Secretary】 Administrator** shall require that equipment deployed under this paragraph be replaced by equipment certified under paragraph (1) when equipment certified under paragraph (1) becomes commercially available. The **【Under Secretary】 Administrator** is

authorized, based on operational considerations at individual airports, to waive the required installation of commercially available equipment under paragraph (1) in the interests of aviation security. The [Under Secretary] *Administrator* may permit the requirements of this paragraph to be met at airports by the deployment of dogs or other appropriate animals to supplement equipment for screening passengers, baggage, mail, or cargo for explosives or weapons.

[(4)](3) This subsection does not prohibit the [Under Secretary] *Administrator* from purchasing or deploying explosive detection equipment described in paragraph (1) of this subsection.

(b) GRANTS.—The [Secretary of Transportation] *Administrator* may provide grants to continue the Explosive Detection K-9 Team Training Program to detect explosives at airports and on aircraft.

#### **§ 44914. Airport construction guidelines**

In consultation with *the Department of Transportation*, air carriers, airport authorities, and others the [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* considers appropriate, the [Under Secretary] *Administrator* shall develop guidelines for airport design and construction to allow for maximum security enhancement. In developing the guidelines, the [Under Secretary] *Administrator* shall consider the results of the assessment carried out under section 44904(a) of this title.

#### **§ 44915. Exemptions**

The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* may exempt from sections 44901, 44903(a)-(c) and (e), 44906, 44935, and 44936 of this title airports in Alaska served only by air carriers that—

- (1) hold certificates issued under section 41102 of this title;
- (2) operate aircraft with certificates for a maximum gross takeoff weight of less than 12,500 pounds; and
- (3) board passengers, or load property intended to be carried in an aircraft cabin, that will be screened under section 44901 of this title at another airport in Alaska before the passengers board, or the property is loaded on, an aircraft for a place outside Alaska.

#### **§ 44916. Assessments and evaluations**

(a) PERIODIC ASSESSMENTS.—The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* shall require each air carrier and airport (including the airport owner or operator in cooperation with the air carriers and vendors serving each airport) that provides for intrastate, interstate, or foreign air transportation to conduct periodic vulnerability assessments of the security systems of that air carrier or airport, respectively. The Transportation Security Administration shall perform periodic audits of such assessments.

(b) INVESTIGATIONS.—The [Under Secretary] *Administrator of the Transportation Security Administration* shall conduct periodic and unannounced inspections of security systems of airports and air carriers to determine the effectiveness and vulnerabilities of

such systems. To the extent allowable by law, the [Under Secretary] *Administrator* may provide for anonymous tests of those security systems.

**§ 44917. Deployment of Federal air marshals**

(a) IN GENERAL.—The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* under the authority provided by section 44903(d)—

(1) may provide for deployment of Federal air marshals on every passenger flight of air carriers in air transportation or intrastate air transportation;

(2) shall provide for deployment of Federal air marshals on every such flight determined [by the Secretary] to present high security risks;

(3) shall provide for appropriate training, supervision, and equipment of Federal air marshals;

(4) shall require air carriers providing flights described in paragraph (1) to provide seating for a Federal air marshal on any such flight without regard to the availability of seats on the flight and at no cost to the United States Government or the marshal;

(5) may require air carriers to provide, on a space-available basis, to an off-duty Federal air marshal a seat on a flight to the airport nearest the marshal's home at no cost to the marshal or the United States Government if the marshal is traveling to that airport after completing his or her security duties;

(6) may enter into agreements with Federal, State, and local agencies under which appropriately-trained law enforcement personnel from such agencies, when traveling on a flight of an air carrier, will carry a firearm and be prepared to assist Federal air marshals;

(7) shall establish procedures to ensure that Federal air marshals are made aware of any armed or unarmed law enforcement personnel on board an aircraft; and

(8) may appoint—

(A) an individual who is a retired law enforcement officer;

(B) an individual who is a retired member of the Armed Forces; and

(C) an individual who has been furloughed from an air carrier crew position in the 1-year period beginning on September 11, 2001,

(1) as a Federal air marshal, regardless of age, if the individual otherwise meets the background and fitness qualifications required for Federal air marshals.

(b)\* \* \*

(d) TRAINING FOR FOREIGN LAW ENFORCEMENT PERSONNEL.—

(1) IN GENERAL.—The [Assistant Secretary for Immigration and Customs Enforcement of the Department of Homeland Security] *Administrator of the Transportation Security Administration*, after consultation with the Secretary of State, may direct the Federal Air Marshal Service to provide appropriate air marshal training to law enforcement personnel of foreign countries.

(2) WATCHLIST SCREENING.—The Federal Air Marshal Service may only provide appropriate air marshal training to law enforcement personnel of foreign countries after comparing the identifying information and records of law enforcement personnel of foreign countries against all appropriate records in the consolidated and integrated terrorist watchlists maintained by the Federal Government.

(3) FEES.—The [Assistant Secretary] *Administrator of the Transportation Security Administration* shall establish reasonable fees and charges to pay expenses incurred in carrying out this subsection. Funds collected under this subsection shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the [Assistant Secretary] *Administrator of the Transportation Security Administration* for purposes for which amounts in such account are available.

#### **§ 44918. Crew training**

(a) BASIC SECURITY TRAINING.—

(1) IN GENERAL.—Each air carrier providing scheduled passenger air transportation shall carry out a training program for flight and cabin crew members to prepare the crew members for potential threat conditions.

(2) PROGRAM ELEMENTS.—An air carrier training program under this subsection shall include, at a minimum, elements that address each of the following:

(A) Recognizing suspicious activities and determining the seriousness of any occurrence.

(B) Crew communication and coordination.

(C) The proper commands to give passengers and attackers.

(D) Appropriate responses to defend oneself.

(E) Use of protective devices assigned to crew members (to the extent such devices are required by the Administrator of the Federal Aviation Administration or the [Under Secretary for Border and Transportation Security] *Administrator of the Transportation Security Administration*).

(F) Psychology of terrorists to cope with hijacker behavior and passenger responses.

(G) Situational training exercises regarding various threat conditions.

(H) Flight deck procedures or aircraft maneuvers to defend the aircraft and cabin crew responses to such procedures and maneuvers.

(I) The proper conduct of a cabin search, including explosive device recognition.

(J) Any other subject matter considered appropriate by the [Under Secretary] *Administrator of the Transportation Security Administration*.

(3) APPROVAL.—An air carrier training program under this subsection shall be subject to approval by the [Under Secretary] *Administrator of the Transportation Security Administration*.

(4) MINIMUM STANDARDS.—[Not later than one year after the date of enactment of the Vision 100--Century of Aviation Reauthorization Act, the] *The [Under Secretary] Administrator of the Transportation Security Administration* may establish minimum standards for the training provided under this subsection and for recurrent training.

(5) EXISTING PROGRAMS.—Notwithstanding paragraphs (3) and (4), any training program of an air carrier to prepare flight and cabin crew members for potential threat conditions that was approved by the Administrator or the [Under Secretary] *Administrator of the Transportation Security Administration* before [the date of enactment of the Vision 100—Century of Aviation Reauthorization Act] *December 12, 2003*, may continue in effect until disapproved or ordered modified by the [Under Secretary] *Administrator of the Transportation Security Administration*.

(6) MONITORING.—The [Under Secretary] *Administrator of the Transportation Security Administration*, in consultation with the Administrator, shall monitor air carrier training programs under this subsection and periodically shall review an air carrier's training program to ensure that the program is adequately preparing crew members for potential threat conditions. In determining when an air carrier's training program should be reviewed under this paragraph, the [Under Secretary] *Administrator of the Transportation Security Administration* shall consider complaints from crew members. The [Under Secretary] *Administrator of the Transportation Security Administration* shall ensure that employees responsible for monitoring the training programs have the necessary resources and knowledge.

(7) UPDATES.—The [Under Secretary] *Administrator of the Transportation Security Administration*, in consultation with the Administrator, shall order air carriers to modify training programs under this subsection to reflect new or different security threats.

(b) ADVANCED SELF-DEFENSE TRAINING.—

(1) IN GENERAL.—[Not later than one year after the date of enactment of the Vision 100--Century of Aviation Reauthorization Act, the] *The [Under Secretary] Administrator of the Transportation Security Administration* shall develop and provide a voluntary training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

(2) PROGRAM ELEMENTS.—The training program under this subsection shall include both classroom and effective hands-on training in the following elements of self-defense:

- (A) Deterring a passenger who might present a threat.
- (B) Advanced control, striking, and restraint techniques.
- (C) Training to defend oneself against edged or contact weapons.
- (D) Methods to subdue and restrain an attacker.
- (E) Use of available items aboard the aircraft for self-defense.
- (F) Appropriate and effective responses to defend oneself, including the use of force against an attacker.

(G) Any other element of training that the **Under Secretary** *Administrator of the Transportation Security Administration* considers appropriate.

(3) PARTICIPATION NOT REQUIRED.—A crew member shall not be required to participate in the training program under this subsection.

(4) COMPENSATION.—Neither the Federal Government nor an air carrier shall be required to compensate a crew member for participating in the training program under this subsection.

(5) FEES.—A crew member shall not be required to pay a fee for the training program under this subsection.

(6) CONSULTATION.—In developing the training program under this subsection, the **Under Secretary** *Administrator of the Transportation Security Administration* shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, representatives of air carriers, the director of self-defense training in the **Federal Air Marshals Service** *Federal Air Marshal Service*, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

(7) DESIGNATION OF TSA OFFICIAL.—The **Under Secretary** *Administrator of the Transportation Security Administration* shall designate an official in the Transportation Security Administration to be responsible for implementing the training program under this subsection. The official shall consult with air carriers and labor organizations representing crew members before implementing the program to ensure that it is appropriate for situations that may arise on board an aircraft during a flight.

(c) LIMITATION.—Actions by crew members under this section shall be subject to the provisions of section 44903(k).

#### **§ 44919. Security screening pilot program**

**[(a) ESTABLISHMENT OF PROGRAM.]**—The Under Secretary shall establish a pilot program under which, upon approval of an application submitted by an operator of an airport, the screening of passengers and property at the airport under section 44901 will be carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary.

**[(b) PERIOD OF PILOT PROGRAM.]**—The pilot program under this section shall begin on the last day of the 1-year period beginning on the date of enactment of this section and end on the last day of the 3-year period beginning on such date of enactment.

**[(c) APPLICATIONS.]**—An operator of an airport may submit to the Under Secretary an application to participate in the pilot program under this section.

**[(d) SELECTION OF AIRPORTS.]**—From among applications submitted under subsection (c), the Under Secretary may select for participation in the pilot program not more than 1 airport from each of the 5 airport security risk categories, as defined by the Under Secretary.

**[(e) SUPERVISION OF SCREENED PERSONNEL.]**—The Under Secretary shall provide Federal Government supervisors to oversee all

screening at each airport participating in the pilot program under this section and provide Federal Government law enforcement officers at the airport pursuant to this chapter.

[(f) QUALIFIED PRIVATE SCREENING COMPANY.—A private screening company is qualified to provide screening services at an airport participating in the pilot program under this section if the company will only employ individuals to provide such services who meet all the requirements of this chapter applicable to Federal Government personnel who perform screening services at airports under this chapter and will provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel in accordance with this chapter.]

[(g) STANDARDS FOR PRIVATE SCREENING COMPANIES.—The Under Secretary may enter into a contract with a private screening company to provide screening at an airport participating in the pilot program under this section only if the Under Secretary determines and certifies to Congress that the private screening company is owned and controlled by a citizen of the United States, to the extent that the Under Secretary determines that there are private screening companies owned and controlled by such citizens.]

[(h) TERMINATION OF CONTRACTS.—The Under Secretary may terminate any contract entered into with a private screening company to provide screening services at an airport under the pilot program if the Under Secretary finds that the company has failed repeatedly to comply with any standard, regulation, directive, order, law, or contract applicable to the hiring or training of personnel to provide such services or to the provision of screening at the airport.]

[(i) ELECTION.—If a contract is in effect with respect to screening at an airport under the pilot program on the last day of the 3-year period beginning on the date of enactment of this section, the operator of the airport may elect to continue to have such screening carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary under section 44920 or by Federal Government personnel in accordance with this chapter.]

#### **§ 44919. PreCheck Program**

(a) *IN GENERAL.*—The Administrator of the Transportation Security Administration shall continue to administer the PreCheck Program in accordance with section 109(a)(3) of the Aviation and Transportation Security Act (49 U.S.C. 114 note).

(b) *EXPANSION.*—Not later than 180 days after the date of enactment of the TSA Modernization Act, the Administrator shall enter into an agreement, using other transaction authority under section 114(m) of this title, with at least 2 private sector entities to increase the methods and capabilities available for the public to enroll in the PreCheck Program.

(c) *MINIMUM CAPABILITY REQUIREMENTS.*—At least 1 agreement under subsection (b) shall include the following capabilities:

- (1) Start-to-finish secure online or mobile enrollment capability.
- (2) Vetting of an applicant by means other than biometrics, such as a risk assessment, if—

- (A) *such means—*
- (i) *are evaluated and certified by the Secretary of Homeland Security;*
  - (ii) *meet the definition of a qualified anti-terrorism technology under section 865 of the Homeland Security Act of 2002 (6 U.S.C. 444); or*
  - (iii) *are determined by the Administrator to provide a risk assessment that is as effective as a fingerprint-based criminal history records check conducted through the Federal Bureau of Investigation with respect to identifying individuals who are not qualified to participate in the PreCheck Program due to disqualifying criminal history; and*
- (B) *with regard to private sector risk assessments, the Secretary has certified that reasonable procedures are in place with regard to the accuracy, relevancy, and proper utilization of information employed in such risk assessments.*
- (d) **ADDITIONAL CAPABILITY REQUIREMENTS.**—*At least 1 agreement under subsection (b) shall include the following capabilities:*
- (1) *Start-to-finish secure online or mobile enrollment capability.*
  - (2) *Vetting of an applicant by means of biometrics if the collection—*
    - (A) *is comparable with the appropriate and applicable standards developed by the National Institute of Standards and Technology; and*
    - (B) *protects privacy and data security, including that any personally identifiable information is collected, retained, used, and shared in a manner consistent with section 552a of title 5, United States Code (commonly known as “Privacy Act of 1974”), and with agency regulations.*
- (e) **TARGET ENROLLMENT.**—*Subject to subsections (b), (c), and (d), the Administrator shall take actions to expand the total number of individuals enrolled in the PreCheck Program as follows:*
- (1) *7,000,000 passengers before October 1, 2018.*
  - (2) *10,000,000 passengers before October 1, 2019.*
  - (3) *15,000,000 passengers before October 1, 2020.*
- (f) **MARKETING OF PRECHECK PROGRAM.**—*Not later than 90 days after the date of enactment of the TSA Modernization Act, the Administrator shall—*
- (1) *enter into at least 2 agreements, using other transaction authority under section 114(m) of this title, to market the PreCheck Program; and*
  - (2) *implement a long-term strategy for partnering with the private sector to encourage enrollment in such program.*
- (g) **IDENTITY VERIFICATION ENHANCEMENT.**—*The Administrator shall—*
- (1) *coordinate with the heads of appropriate components of the Department to leverage Department-held data and technologies to verify the identity and citizenship of individuals enrolling in the PreCheck Program;*
  - (2) *partner with the private sector to use biometrics and authentication standards, such as relevant standards developed*

by the National Institute of Standards and Technology, to facilitate enrollment in the program; and

(3) consider leveraging the existing resources and abilities of airports to collect fingerprints for use in background checks to expedite identity verification.

(h) **PRECHECK PROGRAM LANES OPERATION.**—The Administrator shall—

(1) ensure that PreCheck Program screening lanes are open and available during peak and high-volume travel times at appropriate airports to individuals enrolled in the PreCheck Program; and

(2) make every practicable effort to provide expedited screening at standard screening lanes during times when PreCheck Program screening lanes are closed to individuals enrolled in the program in order to maintain operational efficiency.

(i) **VETTING FOR PRECHECK PROGRAM PARTICIPANTS.**—The Administrator shall initiate an assessment to identify any security vulnerabilities in the vetting process for the PreCheck Program, including determining whether subjecting PreCheck Program participants to recurrent fingerprint-based criminal history records checks, in addition to recurrent checks against the terrorist watchlist, could be done in a cost-effective manner to strengthen the security of the PreCheck Program.

(j) **ASSURANCE OF SEPARATE PROGRAM.**—In carrying out this section, the Administrator shall ensure that the PreCheck program enrollment capabilities, including the additional private sector application capabilities under subsections (b), (c), and (d), are separate from any other related TSA program, initiative, or procurement, including the Universal Enrollment Services program.

(k) **EXPENDITURE OF FUNDS.**—Any Federal funds expended by the Administrator to expand PreCheck Program enrollment shall be expended in a manner that meets the requirements of this section.

**§ 44920. [Security screening opt-out program] Screening partnership program**

[(a) **IN GENERAL.**—On or after the last day of the 2-year period beginning on the date on which the Under Secretary transmits to Congress the certification required by section 110(c) of the Aviation and Transportation Security Act, an operator of an airport may submit to the Under Secretary an application to have the screening of passengers and property at the airport under section 44901 to be carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary.]]

(a) **IN GENERAL.**—An operator of an airport, airport terminal, or airport security checkpoint may submit to the Administrator of the Transportation Security Administration an application to carry out the screening of passengers and property at the airport under section 44901 by personnel of a qualified private screening company pursuant to a contract with the Transportation Security Administration.

(b) **APPROVAL OF APPLICATIONS.**—

[(1) **IN GENERAL.**—Not later than 120 days after the date of receipt of an application submitted by an airport operator

under subsection (a), the Under Secretary shall approve or deny the application.】

(1) *IN GENERAL.*—*Not later than 30 days after the date of receipt of an application submitted by an operator of an airport, airport terminal, or airport security checkpoint under subsection (a), the Administrator shall approve or deny the application.*

(2) *STANDARDS.*—The 【Under Secretary】 *Administrator* shall approve an application submitted by an airport operator under subsection (a) if the 【Under Secretary】 *Administrator* determines that the approval would not compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport.

(3) *REPORTS ON DENIALS OF APPLICATIONS.*—

(A) *IN GENERAL.*—If the 【Under Secretary】 *Administrator* denies an application submitted by an airport operator under subsection (a), the 【Under Secretary】 *Administrator* shall provide to the airport operator, not later than 60 days following the date of the denial, a written report that sets forth—

(i) the findings that served as the basis for the denial;

(ii) the results of any cost or security analysis conducted in considering the application; and

(iii) recommendations on how the airport operator can address the reasons for the denial.

(B) *SUBMISSION TO CONGRESS.*—The 【Under Secretary】 *Administrator* shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives a copy of any report provided to an airport operator under subparagraph (A).

(c) *QUALIFIED PRIVATE SCREENING COMPANY.*—A private screening company is qualified to provide screening services at an airport under this section if the company will only employ individuals to provide such services who meet all the requirements of this chapter applicable to Federal Government personnel who perform screening services at airports under this chapter and will provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel in accordance with this chapter.

(d) 【STANDARDS】 *SELECTION OF CONTRACTS AND STANDARDS FOR PRIVATE SCREENING COMPANIES.*—

(1) *IN GENERAL.*—【The Under Secretary may enter into a contract with a private screening company to provide screening at an airport under this section only if the Under Secretary determines and certifies to Congress that—】 *The Administrator shall, upon approval of the application, provide each operator of an airport, airport terminal, or airport security checkpoint with a list of qualified private screening companies.*

(2) *CONTRACTS.*—*Not later than 60 days after the selection of a qualified private screening company by the operator, the Administrator shall enter into a contract with such company for the provision of screening at the airport, airport terminal, or airport security checkpoint if—*

(A) the level of screening services and protection provided at the airport under the contract will be equal to or greater than the level that would be provided at the airport by Federal Government personnel under this chapter[; and];

(B) the private screening company is owned and controlled by a citizen of the United States, to the extent that the [Under Secretary] *Administrator* determines that there are private screening companies owned and controlled by such citizens[.]; and

(C) the selected qualified private screening company offered contract price is equal to or less than the comprehensive cost to the Federal Government to provide screening services at the airport, airport terminal, or airport security checkpoint.

[(2)](3) **WAIVERS.**—The [Under Secretary] *Administrator* may waive the requirement of [paragraph (1)(B)] *paragraph (2)(B)* for any company that is a United States subsidiary with a parent company that has implemented a foreign ownership, control, or influence mitigation plan that has been approved by the Defense Security Service of the Department of Defense prior to the submission of the application. The [Under Secretary] *Administrator* has complete discretion to reject any application from a private screening company to provide screening services at an airport that requires a waiver under this paragraph.

(e) **SUPERVISION OF [SCREENED] SCREENING PERSONNEL.**—[The Under Secretary shall] *The Administrator shall*—

(1) provide Federal Government supervisors to oversee all screening at each airport at which screening services are provided under this section and provide Federal Government law enforcement officers at the airport pursuant to this chapter[.]; and

(2) *undertake covert testing and remedial training support for employees of private screening companies providing screening at airports.*

(f) **TERMINATION OR SUSPENSION OF CONTRACTS.**—The [Under Secretary] *Administrator* may [terminate] *suspend or terminate, as appropriate*, any contract entered into with a private screening company to provide screening services at an airport under this section if the [Under Secretary] *Administrator* finds that the company has failed repeatedly to comply with any standard, regulation, directive, order, law, or contract applicable to the hiring or training of personnel to provide such services or to the provision of screening at the airport.

(g) **OPERATION OF AIRPORT.**—Notwithstanding any other provision of law, an operator of an airport shall not be liable for any claims for damages filed in State or Federal court (including a claim for compensatory, punitive, contributory, or indemnity damages) relating to—

(1) such airport operator's decision to submit an application to the Secretary of Homeland Security under [subsection (a) or section 44919] *subsection (a)* or such airport operator's decision not to submit an application; and

(2) any act of negligence, gross negligence, or intentional wrongdoing by—

(A) a qualified private screening company or any of its employees in any case in which the qualified private screening company is acting under a contract entered into with the Secretary of Homeland Security or the Secretary's designee; or

(B) employees of the Federal Government providing passenger and property security screening services at the airport.

(3) Nothing in this section shall relieve any airport operator from liability for its own acts or omissions related to its security responsibilities, nor except as may be provided by the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 shall it relieve any qualified private screening company or its employees from any liability related to its own acts of negligence, gross negligence, or intentional wrongdoing.

[(h) RECOMMENDATIONS OF AIRPORT OPERATOR.—As part of any submission of an application for a private screening company to provide screening services at an airport, the airport operator shall provide to the Under Secretary a recommendation as to which company would best serve the security screening and passenger needs of the airport, along with a statement explaining the basis of the operator's recommendation.]

(i) *DEFINITION OF ADMINISTRATOR.*—*In this section, the term “Administrator” means the Administrator of the Transportation Security Administration.*

#### **§ 44921. Federal flight deck officer program**

(a) *ESTABLISHMENT.*—The [Under Secretary of Transportation for Security] *Administrator* shall establish a program to deputize volunteer pilots of air carriers providing air transportation or intrastate air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as “Federal flight deck officers”.

(b) *PROCEDURAL REQUIREMENTS.*—

(1) *IN GENERAL.*—[Not later than 3 months after the date of enactment of this section, the Under Secretary] *The Administrator* shall establish procedural requirements to carry out the program under this section.

(2) *COMMENCEMENT OF PROGRAM.*—[Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing] *The Administrator shall train and deputize* pilots who are qualified to be Federal flight deck officers as FFDO under the program.

(3) *ISSUES TO BE ADDRESSED.*—The procedural requirements established under paragraph (1) shall address the following issues:

(A) The type of firearm to be used by a Federal flight deck officer.

(B) The type of ammunition to be used by a Federal flight deck officer.

(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

(M) Any other issues that the **【Under Secretary】** *Administrator* considers necessary.

(N) The **【Under Secretary's】** *Administrator's* decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

(4) PREFERENCE.—In selecting pilots to participate in the program, the **【Under Secretary】** *Administrator* shall give preference to pilots who are former military or law enforcement personnel.

(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

(6) NOTICE TO CONGRESS.—The **【Under Secretary】** *Administrator* shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

(7) MINIMIZATION OF RISK.—If the **【Under Secretary】 Administrator** determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the **【Under Secretary】 Administrator** shall take such actions as may be necessary to minimize that risk.

(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

(1) IN GENERAL.—The **【Under Secretary】 Administrator** shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

(2) TRAINING.—

(A) IN GENERAL.—The **【Under Secretary】 Administrator** shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the **【Under Secretary】 Administrator** shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

(C) TRAINING IN USE OF FIREARMS.—

(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the **【Under Secretary】 Administrator**. Such level shall be comparable to the level of proficiency required of Federal air marshals.

(ii) CONDUCT OF TRAINING.—**【The training of】**

*(I) IN GENERAL.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the **【Under Secretary】 Administrator** or by a firearms training facility **【approved by the Under Secretary】**.*

*(II) ACCESS TO TRAINING FACILITIES.—Not later than 180 days after the date of enactment of the TSA Modernization Act, the Administrator shall designate additional firearms training facilities located in various regions of the United States for Federal flight deck officers for recurrent and requalifying training relative to the number of such facilities available on the day before such date of enactment.*

(iii) REQUALIFICATION.—**【The Under Secretary shall】**

(I) *IN GENERAL.*—The Administrator shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by [the Under Secretary] the Administrator.

(II) *USE OF FACILITIES FOR REQUALIFICATION.*—The Administrator shall allow a Federal flight deck officer to requalify to carry a firearm under the program through training at a Transportation Security Administration-approved firearms training facility utilizing a Transportation Security Administration-approved contractor and a curriculum developed and approved by the Transportation Security Administration.

(iv) *PERIODIC REVIEW.*—The Administrator shall periodically review requalification training intervals and assess whether it is appropriate and sufficient to adjust the time between each requalification training to facilitate continued participation in the program under this section while still maintaining effectiveness of the training, and update the training requirements as appropriate.

(D) *TRAINING REVIEW.*—The Administrator shall periodically review training requirements for initial and recurrent training for Federal flight deck officers and evaluate how training requirements, including the length of training, could be streamlined while maintaining the effectiveness of the training, and update the training requirements as appropriate.

(d) *DEPUTIZATION.*—

(1) *IN GENERAL.*—The [Under Secretary] Administrator may deputize, as a Federal flight deck officer under this section, a pilot who submits to the [Under Secretary] Administrator a request to be such an officer and whom the [Under Secretary] Administrator determines is qualified to be such an officer.

(2) *QUALIFICATION.*—[A pilot is]

(A) *IN GENERAL.*—A pilot is qualified to be a Federal flight deck officer under this section if—

[(A)](i) the pilot is employed by an air carrier;

[(B)](ii) the [Under Secretary] Administrator determines (in the [Under Secretary's] Administrator's discretion) that the pilot meets the standards established by the [Under Secretary] Administrator for being such an officer; and

[(C)](iii) the [Under Secretary] Administrator determines that the pilot has completed the training required by the [Under Secretary] Administrator.

(B) *CONSISTENCY WITH REQUIREMENTS FOR CERTAIN MEDICAL CERTIFICATES.*—In establishing standards under subparagraph (A)(ii), the Administrator may not establish medical or physical standards for a pilot to become a Federal flight deck officer that are inconsistent with or more stringent than the requirements of the Federal Aviation Administration for the issuance of the required airman medical certificate under part 67 of title 14, Code of Federal

*Regulations (or any corresponding similar regulation or ruling).*

(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The **Under Secretary** Administrator may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the **Under Secretary** Administrator determines are qualified to be such officers.

(4) REVOCATION.—The **Under Secretary** Administrator ~~may,~~ may (in the **Under Secretary's** Administrator's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the **Under Secretary** Administrator finds that the pilot is no longer qualified to be such an officer.

(5) TRANSFER FROM INACTIVE TO ACTIVE STATUS.—*In accordance with any applicable Transportation Security Administration appeals processes, a pilot deputized as a Federal flight deck officer who moves to inactive status may return to active status upon successful completion of a recurrent training program administered within program guidelines.*

(e) COMPENSATION.—**Pilots participating**

(1) IN GENERAL.—*Pilots participating* in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

(2) FACILITATION OF TRAINING.—*An air carrier shall permit a pilot seeking to be deputized as a Federal flight deck officer or a Federal flight deck officer to take a reasonable amount of leave to participate in initial, recurrent, or requalification training, as applicable, for the program. Leave required under this paragraph may be provided without compensation.*

(f) AUTHORITY TO CARRY FIREARMS.—

(1) IN GENERAL.—The **Under Secretary** Administrator shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the **Under Secretary** Administrator may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

(4) CONSISTENCY WITH FEDERAL AIR MARSHAL PROGRAM.—*The Administrator shall harmonize, to the extent practicable, the policies relating to the carriage of firearms on flights in foreign air transportation by Federal flight deck officers with the policies of the Federal air marshal program for carrying firearms*

*on such flights and carrying out the duties of a Federal flight deck officer, notwithstanding Annex 17 of the International Civil Aviation Organization.*

(g) **AUTHORITY TO USE FORCE.**—Notwithstanding section 44903(d), the **【Under Secretary】 Administrator** shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

(h) **LIMITATION ON LIABILITY.**—

(1) **LIABILITY OF AIR CARRIERS.**—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

(2) **LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.**—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

(3) **LIABILITY OF FEDERAL GOVERNMENT.**—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

(i) **PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.**—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the **【Under Secretary】 Administrator**—

(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the **【Under Secretary】 Administrator** determines that the discharge was attributable to the negligence of the officer; and

(2) if the **【Under Secretary】 Administrator** determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, **【the Under Secretary may】** may temporarily suspend the program until the shortcoming is corrected.

(j) **LIMITATION ON AUTHORITY OF AIR CARRIERS.**—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier; or

(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

(k) **APPLICABILITY.**—

**【(1) EXEMPTION】.**—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

[(2) PILOT DEFINED.—The term “pilot” means an individual who has final authority and responsibility for the operation and safety of the flight or any other flight deck crew member.]

[(3) ALL-CARGO AIR TRANSPORTATION.—In this section, the term “air transportation” includes all-cargo air transportation.]

(l) DEFINITIONS.—*In this section:*

(1) ADMINISTRATOR.—*The term “Administrator” means the Administrator of the Transportation Security Administration.*

(2) AIR TRANSPORTATION.—*The term “air transportation” includes all-cargo air transportation.*

(3) FIREARMS TRAINING FACILITY.—*The term “firearms training facility” means a private or government-owned gun range approved by the Administrator to provide recurrent or requalification training, as applicable, for the program, utilizing a Transportation Security Administration-approved contractor and a curriculum developed and approved by the Transportation Security Administration.*

(4) PILOT.—*The term “pilot” means an individual who has final authority and responsibility for the operation and safety of the flight or any other flight deck crew member.*

**§ 44922. [Deputation] Deputization of State and local law enforcement officers**

(a) [DEPUTATION] DEPUTIZATION AUTHORITY.—The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* may deputize a State or local law enforcement officer to carry out Federal airport security duties under this chapter.

(b) FULFILLMENT OF REQUIREMENTS.—A State or local law enforcement officer who is deputized under this section shall be treated as a Federal law enforcement officer for purposes of meeting the requirements of this chapter and other provisions of law to provide Federal law enforcement officers to carry out Federal airport security duties.

(c) AGREEMENTS.—To deputize a State or local law enforcement officer under this section, the [Under Secretary] *Administrator* shall enter into a voluntary agreement with the appropriate State or local law enforcement agency that employs the State or local law enforcement officer.

(d) REIMBURSEMENT.—

(1) IN GENERAL.—The [Under Secretary] *Administrator* shall reimburse a State or local law enforcement agency for all reasonable, allowable, and allocable costs incurred by the State or local law enforcement agency with respect to a law enforcement officer deputized under this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(e) FEDERAL TORT CLAIMS ACT.—A State or local law enforcement officer who is deputized under this section shall be treated as an “employee of the Government” for purposes of sections 1346(b), 2401(b), and chapter 171 of title 28, United States Code, while carrying out Federal airport security duties within the course and scope of the officer’s employment, subject to Federal supervision

and control, and in accordance with the terms of such [deputation] *deputization*.

(f) STATIONING OF OFFICERS.—The [Under Secretary] *Administrator* may allow law enforcement personnel to be stationed other than at the airport security screening location if that would be preferable for law enforcement purposes and if such personnel would still be able to provide prompt responsiveness to problems occurring at the screening location.

**§ 44923. Airport security improvement projects**

(a) GRANT AUTHORITY.—Subject to the requirements of this section, the [Under Secretary for Border and Transportation Security of the Department of Homeland Security] *Administrator of the Transportation Security Administration* shall make grants to airport sponsors—

- (1) for projects to replace baggage conveyer systems related to aviation security;
- (2) for projects to reconfigure terminal baggage areas as needed to install explosive detection systems;
- (3) for projects to enable the Under Secretary to deploy explosive detection systems behind the ticket counter, in the baggage sorting area, or in line with the baggage handling system; and
- (4) for other airport security capital improvement projects.

(b) APPLICATIONS.—A sponsor seeking a grant under this section shall submit to the Under Secretary an application in such form and containing such information as the Under Secretary prescribes.

(c) APPROVAL.—The Under Secretary, after consultation with the Secretary of Transportation, may approve an application of a sponsor for a grant under this section only if the Under Secretary determines that the project will improve security at an airport or improve the efficiency of the airport without lessening security.

(d) LETTERS OF INTENT.—

(1) ISSUANCE.—The Under Secretary shall issue a letter of intent to a sponsor committing to obligate from future budget authority an amount, not more than the Federal Government's share of the project's cost, for an airport security improvement project (including interest costs and costs of formulating the project).

(2) SCHEDULE.—A letter of intent under this subsection shall establish a schedule under which the Under Secretary will reimburse the sponsor for the Government's share of the project's costs, as amounts become available, if the sponsor, after the Under Secretary issues the letter, carries out the project without receiving amounts under this section.

(3) NOTICE TO UNDER SECRETARY.—A sponsor that has been issued a letter of intent under this subsection shall notify the Under Secretary of the sponsor's intent to carry out a project before the project begins.

(4) NOTICE TO CONGRESS.—The Under Secretary shall transmit to the Committees on Appropriations and Transportation and Infrastructure of the House of Representatives and the Committees on Appropriations and Commerce, Science and Transportation of the Senate a written notification at least 3 days before the issuance of a letter of intent under this section.

(5) LIMITATIONS.—A letter of intent issued under this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

(6) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued.

(e) FEDERAL SHARE.—

[(1) IN GENERAL].—The Government’s share of the cost of a project under this section shall be 90 percent for a project at a medium or large hub airport and 95 percent for a project at any other airport.

[(2) EXISTING LETTERS OF INTENT].—The Under Secretary shall revise letters of intent issued before the date of enactment of this section to reflect the cost share established in this subsection with respect to grants made after September 30, 2003.]

(f) SPONSOR DEFINED.—In this section, the term “sponsor” has the meaning given that term in section 47102.

[(j) AUTHORIZATION OF APPROPRIATIONS.—

[(1) IN GENERAL].—In addition to amounts made available under subsection (h), there is authorized to be appropriated to carry out this section \$400,000,000 for each of fiscal years 2005, 2006, and 2007, and \$450,000,000 for each of fiscal years 2008 through 2011. Such sums shall remain available until expended.

[(2) ALLOCATIONS].—50 percent of amounts appropriated pursuant to this subsection for a fiscal year shall be used for making allocations under subsection (h)(2) and 50 percent of such amounts shall be used for making discretionary grants under subsection (h)(3).]

**§ 44924. Repair station security**

(a) SECURITY REVIEW AND AUDIT.—To ensure the security of maintenance and repair work conducted on air carrier aircraft and components at foreign repair stations, the [Under Secretary for Border and Transportation Security of the Department of Homeland Security] *Administrator of the Transportation Security Administration*, in consultation with the Administrator of the Federal Aviation Administration, shall complete a security review and audit of foreign repair stations that are certified by the [Administrator under] *Administrator of the Federal Aviation Administration* under part 145 of title 14, Code of Federal Regulations, and that work on air carrier aircraft and components. The review shall be completed not later than 6 months after the date on which the [Under Secretary] *Administrator of the Transportation Security Administration* issues regulations under subsection (f).

(b) ADDRESSING SECURITY CONCERNS.—The [Under Secretary] *Administrator of the Transportation Security Administration* shall require a foreign repair station to address the security issues and vulnerabilities identified in a security audit conducted under subsection (a) within 90 days of providing notice to the repair station

of the security issues and vulnerabilities so identified and shall notify the [Administrator] *Administrator of the Federal Aviation Administration* that a deficiency was identified in the security audit.

(c) SUSPENSIONS AND REVOCATIONS OF CERTIFICATES.—

(1) FAILURE TO CARRY OUT EFFECTIVE SECURITY MEASURES.—

If, after the 90th day on which a notice is provided to a foreign repair station under subsection (b), the [Under Secretary] *Administrator of the Transportation Security Administration* determines that the foreign repair station does not maintain and carry out effective security measures, the [Under Secretary] *Administrator of the Transportation Security Administration* shall notify the [Administrator] *Administrator of the Federal Aviation Administration* of the determination. Upon receipt of the determination, the [Administrator] *Administrator of the Federal Aviation Administration* shall suspend the certification of the repair station until such time as the [Under Secretary] *Administrator of the Transportation Security Administration* determines that the repair station maintains and carries out effective security measures and transmits the determination to the [Administrator] *Administrator of the Federal Aviation Administration*.

(2) IMMEDIATE SECURITY RISK.—If the [Under Secretary] *Administrator of the Transportation Security Administration* determines that a foreign repair station poses an immediate security risk, the [Under Secretary] *Administrator of the Transportation Security Administration* shall notify the [Administrator] *Administrator of the Federal Aviation Administration* of the determination. Upon receipt of the determination, the [Administrator] *Administrator of the Federal Aviation Administration* shall revoke the certification of the repair station.

(3) PROCEDURES FOR APPEALS.—The [Under Secretary] *Administrator of the Transportation Security Administration*, in consultation with the [Administrator] *Administrator of the Federal Aviation Administration*, shall establish procedures for appealing a revocation of a certificate under this subsection.

(d) FAILURE TO MEET AUDIT DEADLINE.—If the security audits required by subsection (a) are not completed on or before the date that is 6 months after the date on which the [Under Secretary] *Administrator of the Transportation Security Administration* issues regulations under subsection (f), the [Administrator] *Administrator of the Federal Aviation Administration* shall be barred from certifying any foreign repair station (other than a station that was previously certified, or is in the process of certification, by the Administration under this part) until such audits are completed for existing stations.

(e) PRIORITY FOR AUDITS.—In conducting the audits described in subsection (a), the [Under Secretary] *Administrator of the Transportation Security Administration* and the [Administrator] *Administrator of the Federal Aviation Administration* shall give priority to foreign repair stations located in countries identified by the Government as posing the most significant security risks.

(f) REGULATIONS.—[Not later than 240 days after the date of enactment of this section, the] *The [Under Secretary] Administrator of the Transportation Security Administration*, in consultation with the [Administrator] *Administrator of the Federal Aviation Admin-*

istration, shall issue final regulations to ensure the security of foreign and domestic aircraft repair stations.

(g) REPORT TO CONGRESS.—If the **【Under Secretary】 Administrator of the Transportation Security Administration** does not issue final regulations before the deadline specified in subsection (f), the **【Under Secretary】 Administrator of the Transportation Security Administration** shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an explanation as to why the deadline was not met and a schedule for issuing the final regulations.

**§ 44925. Deployment and use of detection equipment at airport screening checkpoints**

(a) WEAPONS AND EXPLOSIVES.—The Secretary of Homeland Security shall give a high priority to developing, testing, improving, and deploying, at airport screening checkpoints, equipment that detects nonmetallic, chemical, biological, and radiological weapons, and explosives, in all forms, on individuals and in their personal property. The Secretary shall ensure that the equipment alone, or as part of an integrated system, can detect under realistic operating conditions the types of weapons and explosives that terrorists would likely try to smuggle aboard an air carrier aircraft.

(b) STRATEGIC PLAN FOR DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.—

(1) IN GENERAL.—**【Not later than 90 days after the date of enactment of this section, the Assistant Secretary of Homeland Security (Transportation Security Administration)】** *The Administrator of the Transportation Security Administration* shall submit to the appropriate congressional committees a strategic plan to promote the optimal utilization and deployment of explosive detection equipment at airports to screen individuals and their personal property. Such equipment includes walk-through explosive detection portals, document scanners, shoe scanners, and backscatter x-ray scanners. The plan may be submitted in a classified format.

(2) CONTENT.—The strategic plan shall include, at minimum—

(A) a description of current efforts to detect explosives in all forms on individuals and in their personal property;

(B) a description of the operational applications of explosive detection equipment at airport screening checkpoints;

(C) a deployment schedule and a description of the quantities of equipment needed to implement the plan;

(D) a description of funding needs to implement the plan, including a financing plan that provides for leveraging of non-Federal funding;

(E) a description of the measures taken and anticipated to be taken in carrying out subsection (d); and

(F) a description of any recommended legislative actions.

**【(3) IMPLEMENTATION.—The Secretary shall begin implementation of the strategic plan within one year after the date of enactment of this paragraph.】**

(c) PORTAL DETECTION SYSTEMS.—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the

Transportation Security Administration \$250,000,000, in addition to any amounts otherwise authorized by law, for research, development, and installation of detection systems and other devices for the detection of biological, chemical, radiological, and explosive materials.

(d) INTERIM ACTION.—Until measures are implemented that enable the screening of all passengers for explosives, the [Assistant Secretary] *Administrator of the Transportation Security Administration* shall provide, by such means as the [Assistant Secretary] *Administrator of the Transportation Security Administration* considers appropriate, explosives detection screening for all passengers identified for additional screening and their personal property that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.

**§ 44926. Appeal and redress process for passengers wrongly delayed or prohibited from boarding a flight**

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a timely and fair process for individuals who believe they have been delayed or prohibited from boarding a commercial aircraft because they were wrongly identified as a threat under the regimes utilized by the Transportation Security Administration, United States Customs and Border Protection, or any other office or component of the Department of Homeland Security.

(b) OFFICE OF APPEALS AND REDRESS.—

(1) ESTABLISHMENT.—The Secretary shall establish in the Department an Office of Appeals and Redress to implement, coordinate, and execute the process established by the Secretary pursuant to subsection (a). The Office shall include representatives from the Transportation Security Administration, United States Customs and Border Protection, and such other offices and components of the Department as the Secretary determines appropriate.

(2) RECORDS.—The process established by the Secretary pursuant to subsection (a) shall include the establishment of a method by which the Office, under the direction of the Secretary, will be able to maintain a record of air carrier passengers and other individuals who have been misidentified and have corrected erroneous information.

(3) INFORMATION.—To prevent repeated delays of [an misidentified passenger] *a misidentified passenger* or other individual, the Office shall—

(A) ensure that the records maintained under this subsection contain information determined by the Secretary to authenticate the identity of such a passenger or individual;

(B) furnish to the Transportation Security Administration, United States Customs and Border Protection, or any other appropriate office or component of the Department, upon request, such information as may be necessary to allow such office or component to assist air carriers in improving their administration of the advanced passenger prescreening system and reduce the number of false positives; and

(C) require air carriers and foreign air carriers take action to identify passengers determined, under the process established under subsection (a), to have been wrongly identified.

(4) HANDLING OF PERSONALLY IDENTIFIABLE INFORMATION.—The Secretary, in conjunction with the Chief Privacy Officer of the Department shall—

(A) require that Federal employees of the Department handling personally identifiable information of passengers (in this paragraph referred to as 'PII') complete mandatory privacy and security training prior to being authorized to handle PII;

(B) ensure that the records maintained under this subsection are secured by encryption, one-way hashing, other data anonymization techniques, or such other equivalent security technical protections as the Secretary determines necessary;

(C) limit the information collected from misidentified passengers or other individuals to the minimum amount necessary to resolve a redress request;

(D) require that the data generated under this subsection shall be shared or transferred via a secure data network, that has been audited to ensure that the anti-hacking and other security related software functions properly and is updated as necessary;

(E) ensure that any employee of the Department receiving the data contained within the records handles the information in accordance with the section 552a of title 5, United States Code, and the Federal Information Security Management Act of 2002 (Public Law 107-296);

(F) only retain the data for as long as needed to assist the individual traveler in the redress process; and

(G) conduct and publish a privacy impact assessment of the process described within this subsection and transmit the assessment to the Committee on Homeland Security of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and Committee on Homeland Security and Governmental Affairs of the Senate.

(5) INITIATION OF REDRESS PROCESS AT AIRPORTS.—The Office shall establish at each airport at which the Department has a significant presence a process to provide information to air carrier passengers to begin the redress process established pursuant to subsection (a).

**§ 44927. Expedited screening for severely injured or disabled members of the Armed Forces and severely injured or disabled veterans**

(a) PASSENGER SCREENING.—The [Assistant Secretary] *Administrator of the Transportation Security Administration*, in consultation with the Secretary of Defense, the Secretary of [Veterans Affairs] *Veterans Affairs*, and organizations identified by the Secretaries of Defense and Veteran Affairs that advocate on behalf of severely injured or disabled members of the Armed Forces and severely injured or disabled veterans, shall develop and implement a

process to support and facilitate the ease of travel and to the extent possible provide expedited passenger screening services for severely injured or disabled members of the Armed Forces and severely injured or disabled veterans through passenger screening. The process shall be designed to offer the individual private screening to the maximum extent practicable.

(b) OPERATIONS CENTER.—As part of the process under subsection (a), the [Assistant Secretary] *Administrator of the Transportation Security Administration* shall maintain an operations center to provide support and facilitate the movement of severely injured or disabled members of the Armed Forces and severely injured or disabled veterans through passenger screening prior to boarding a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.

(c) PROTOCOLS.—The [Assistant Secretary] *Administrator of the Transportation Security Administration* shall—

(1) establish and publish protocols, in consultation with the Secretary of Defense, the Secretary of Veterans Affairs, and the organizations identified under subsection (a), under which a severely injured or disabled member of the Armed Forces or severely injured or disabled veteran, or the family member or other representative of such member or veteran, may contact the operations center maintained under subsection (b) and request the expedited passenger screening services described in subsection (a) for that member or veteran; and

(2) upon receipt of a request under paragraph (1), require the operations center to notify the appropriate Federal Security Director of the request for expedited passenger screening services, as described in subsection (a), for that member or veteran.

(d) TRAINING.—The [Assistant Secretary] *Administrator of the Transportation Security Administration* shall integrate training on the protocols established under subsection (c) into the training provided to all employees who will regularly provide the passenger screening services described in subsection (a).

(e) RULE OF CONSTRUCTION.—Nothing in this section shall affect the authority of the [Assistant Secretary] *Administrator of the Transportation Security Administration* to require additional screening of a severely injured or disabled member of the Armed Forces, a severely injured or disabled veteran, or their accompanying family members or nonmedical attendants, if intelligence, law enforcement, or other information indicates that additional screening is necessary.

(f) [REPORT] *REPORTS*.—[Not later than 1 year after the date of enactment of this section, and annually thereafter,] *Each year*, the [Assistant Secretary] *Administrator of the Transportation Security Administration* shall submit to Congress a report on the implementation of this section. Each report shall include each of the following:

(1) Information on the training provided under subsection (d).

(2) Information on the consultations between the [Assistant Secretary] *Administrator of the Transportation Security Administration* and the organizations identified under subsection (a).

(3) The number of people who accessed the operations center during the period covered by the report.

(4) Such other information as the [Assistant Secretary] Administrator of the Transportation Security Administration determines is appropriate.

**§44929. Donation of screening equipment to protect the United States**

(a) *IN GENERAL.*—Subject to subsection (b), the Administrator is authorized to donate security screening equipment to a foreign last point of departure airport operator if such equipment can be reasonably expected to mitigate a specific vulnerability to the security of the United States or United States citizens.

(b) *CONDITIONS.*—Before donating any security screening equipment to a foreign last point of departure airport operator the Administrator shall—

(1) ensure that the screening equipment has been restored to commercially available settings;

(2) ensure that no TSA-specific security standards or algorithms exist on the screening equipment; and

(3) verify that the appropriate officials have an adequate system—

(A) to properly maintain and operate the screening equipment; and

(B) to document and track any removal or disposal of the screening equipment to ensure the screening equipment does not come into the possession of terrorists or otherwise pose a risk to security.

(c) *REPORTS.*—Not later than 30 days before any donation of security screening equipment under subsection (a), the Administrator shall provide to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a detailed written explanation of the following:

(1) The specific vulnerability to the United States or United States citizens that will be mitigated by such donation.

(2) An explanation as to why the recipient of such donation is unable or unwilling to purchase security screening equipment to mitigate such vulnerability.

(3) An evacuation plan for sensitive technologies in case of emergency or instability in the country to which such donation is being made.

(4) How the Administrator will ensure the security screening equipment that is being donated is used and maintained over the course of its life by the recipient.

(5) The total dollar value of such donation.

(6) How the appropriate officials will document and track any removal or disposal of the screening equipment by the recipient to ensure the screening equipment does not come into the possession of terrorists or otherwise pose a risk to security.

## TITLE 49. TRANSPORTATION

## SUBTITLE VII. AVIATION PROGRAMS

## PART A. AIR COMMERCE AND SAFETY

## SUBPART III. SAFETY

## CHAPTER 449. SECURITY

## SUBCHAPTER II. ADMINISTRATION AND PERSONNEL

**§ 44931. Authority to exempt**

*The Secretary of Homeland Security may grant an exemption from a regulation prescribed in carrying out sections 44901, 44903, 44906, 44909(c), and 44935–44937 of this title when the Secretary decides the exemption is in the public interest.*

**§ 44932. Administrative**

(a) *GENERAL AUTHORITY.*—*The Secretary of Homeland Security may take action the Secretary considers necessary to carry out this chapter and chapters 461, 463, and 465 of this title, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.*

(b) *INDEMNIFICATION.*—*The Secretary of Homeland Security may indemnify an officer or employee of the Transportation Security Administration against a claim or judgment arising out of an act that the Secretary decides was committed within the scope of the official duties of the officer or employee.*

**§ 44933. Federal Security Managers**

(a) *ESTABLISHMENT, DESIGNATION, AND STATIONING.*—*The [Under Secretary of Transportation for Security] Administrator of the Transportation Security Administration shall establish the position of [Federal Security Manager] Federal Security Director at each airport in the United States described in section 44903(c). The [Under Secretary] Administrator of the Transportation Security Administration shall designate individuals as [Managers] Federal Security Directors for, and station those [Managers] Federal Security Directors at, those airports.*

(b) *DUTIES AND POWERS.*—*The [Manager] Federal Security Director at each airport shall—*

(1) *oversee the screening of passengers and property at the airport; and*

(2) *carry out other duties prescribed by the [Under Secretary] Administrator of the Transportation Security Administration.*

**§ 44934. Foreign Security Liaison Officers**

(a) *ESTABLISHMENT, DESIGNATION, AND STATIONING.*—*The [Under Secretary of Transportation for Security] Administrator of the Transportation Security Administration shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the [Under Secretary] Administrator decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the [Under Secretary] Administrator shall designate an Officer for each of those [airports].*

In coordination with the Secretary] *airports. In coordination with the Secretary of State, the [Under Secretary] Administrator shall designate an Officer for each of those airports where extraordinary security measures are in place. [The Secretary shall give high priority] The Secretary of State shall give high priority to stationing those Officers.*

(b) DUTIES AND POWERS.—An Officer reports directly to the [Under Secretary] *Administrator of the Transportation Security Administration. The Officer at each airport shall—*

(1) *serve as the liaison of the [Under Secretary] Administrator to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and*

(2) *to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.*

(c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of [the Secretary and the chief] *the Secretary of State and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).*

#### **§ 44935. Employment standards and training**

(a) EMPLOYMENT STANDARDS.—The [Under Secretary of Transportation for Security] *Administrator shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—*

- (1) *minimum training requirements for new employees;*
- (2) *retraining requirements;*
- (3) *minimum staffing levels;*
- (4) *minimum language skills; and*
- (5) *minimum education levels for employees, when appropriate.*

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the [Under Secretary] *Administrator shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the [Under Secretary] Administrator shall recommend guidelines and prescribe appropriate changes in existing procedures to improve that performance.*

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—

(1) The [Under Secretary] *Administrator—*

(A) *may train individuals employed to carry out a security program under section 44903(c) of this title; and*

(B) *shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.*

(2) The **【Under Secretary】 Administrator** may authorize reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs. To the extent practicable, air travel reimbursed under this paragraph shall be on air carriers.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—

(1) The **【Under Secretary】 Administrator** shall prescribe standards for educating and training—

- (A) ground security coordinators;
- (B) security supervisory personnel; and
- (C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

(e) SECURITY SCREENERS.—

(1) TRAINING PROGRAM.—The **【Under Secretary of Transportation for Security】 Administrator** shall establish a program for the hiring and training of security screening personnel.

(2) HIRING.—

(A) QUALIFICATIONS.—**【Within 30 days after the date of enactment of the Aviation and Transportation Security Act, the】 The 【Under Secretary】 Administrator** shall establish qualification standards for individuals to be hired by the United States as security screening personnel. Notwithstanding any *other* provision of law, those standards shall require, at a minimum, an individual—

- (i) to have a satisfactory or better score on a Federal security screening personnel selection examination;
- (ii) to be a citizen of the United States or a national of the United States, as defined in **【section 1101(a)(22)】 section 101(a)(22)** of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));
- (iii) to meet, at a minimum, the requirements set forth in subsection (f);
- (iv) to meet such other qualifications as the **【Under Secretary】 Administrator** may establish; and
- (v) to have the ability to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(B) BACKGROUND CHECKS.—The **【Under Secretary】 Administrator** shall require that an individual to be hired as a security screener undergo an employment investigation (including a criminal history record check) under section 44936(a)(1).

(C) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The **【Under Secretary】 Administrator**, in consultation with the heads of other appropriate Federal agencies, shall establish procedures, in addition to any back ground check conducted under section 44936, to

ensure that no individual who presents a threat to national security is employed as a security screener.

(3) EXAMINATION; REVIEW OF EXISTING RULES.—The **【Under Secretary】 Administrator** shall develop a security screening personnel examination for use in determining the qualification of individuals seeking employment as security screening personnel. The **【Under Secretary】 Administrator** shall also review, and revise as necessary, any standard, rule, or regulation governing the employment of individuals as security screening personnel.

(f) EMPLOYMENT STANDARDS FOR SCREENING PERSONNEL.—

(1) SCREENER REQUIREMENTS.—Notwithstanding any *other* provision of law, an individual may not be deployed as a security screener unless that individual meets the following requirements:

(A) The individual shall possess a high school diploma, a general equivalency diploma, or experience that the **【Under Secretary】 Administrator** has determined to be sufficient for the individual to perform the duties of the position.

(B) The individual shall possess basic aptitudes and physical abilities, including color perception, visual and aural acuity, physical coordination, and motor skills, to the following standards:

(i) Screeners operating screening equipment shall be able to distinguish on the screening equipment monitor the appropriate imaging standard specified by the **【Under Secretary】 Administrator**.

(ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment.

(iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing.

(v) Screeners who perform pat-downs or hand-held metal detector searches of individuals shall have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(C) The individual shall be able to read, speak, and write English well enough to—

(i) carry out written and oral instructions regarding the proper performance of screening duties;

(ii) read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(iv) write incident reports and statements and log entries into security records in the English language.

(D) The individual shall have satisfactorily completed all initial, recurrent, and appropriate specialized training required by the security program, except as provided in paragraph (3).

(2) VETERANS PREFERENCE.—The **【Under Secretary】 Administrator** shall provide a preference for the hiring of an individual as a security screener if the individual is a member or former member of the armed forces and if the individual is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member of the armed forces.

(3) EXCEPTIONS.—An individual who has not completed the training required by this section may be deployed during the on-the-job portion of training to perform functions if that individual—

(A) is closely supervised; and

(B) does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(4) REMEDIAL TRAINING.—No individual employed as a security screener may perform a screening function after that individual has failed an operational test related to that function until that individual has successfully completed the remedial training specified in the security program.

(5) ANNUAL PROFICIENCY REVIEW.—The **【Under Secretary】 Administrator** shall provide that an annual evaluation of each individual assigned screening duties is conducted and documented. An individual employed as a security screener may not continue to be employed in that capacity unless the evaluation demonstrates that the individual—

(A) continues to meet all qualifications and standards required to perform a screening function;

(B) has a satisfactory record of performance and attention to duty based on the standards and requirements in the security program; and

(C) demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(6) OPERATIONAL TESTING.—In addition to the annual proficiency review conducted under paragraph (5), the **【Under Secretary】 Administrator** shall provide for the operational testing of such personnel.

(g) TRAINING.—

(1) USE OF OTHER AGENCIES.—The **【Under Secretary】 Administrator** may enter into a memorandum of understanding or other arrangement with any other Federal agency or department with appropriate law enforcement responsibilities, to provide personnel, resources, or other forms of assistance in the training of security screening personnel.

(2) TRAINING PLAN.—**【Within 60 days after the date of enactment of the Aviation and Transportation Security Act, the】 The 【Under Secretary】 Administrator** shall develop a plan for the training of security screening personnel. The plan shall require, at a minimum, that a security screener—

(A) has completed 40 hours of classroom instruction or successfully completed a program that the [Under Secretary] *Administrator* determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction;

(B) has completed 60 hours of on-the-job instructions; and

(C) has successfully completed an on-the-job training examination prescribed by the [Under Secretary] *Administrator*.

(3) EQUIPMENT-SPECIFIC TRAINING.—An individual employed as a security screener may not use any security screening device or equipment in the scope of that individual's employment unless the individual has been trained on that device or equipment and has successfully completed a test on the use of the device or equipment.

(h) TECHNOLOGICAL TRAINING.—

(1) IN GENERAL.—The [Under Secretary] *Administrator* shall require training to ensure that screeners are proficient in using the most up-to-date new technology and to ensure their proficiency in recognizing new threats and weapons.

(2) PERIODIC ASSESSMENTS.—The [Under Secretary] *Administrator* shall make periodic assessments to determine if there are dual use items and inform security screening personnel of the existence of such items.

(3) CURRENT LISTS OF DUAL USE ITEMS.—Current lists of dual use items shall be part of the ongoing training for screeners.

(4) DUAL USE DEFINED.—For purposes of this subsection, the term “dual use” item means an item that may seem harmless but that may be used as a weapon.

(i) LIMITATION ON RIGHT TO STRIKE.—An individual that screens passengers or property, or both, at an airport under this section may not participate in a strike, or assert the right to strike, against the person (including a governmental entity) employing such individual to perform such screening.

(j) UNIFORMS.—The [Under Secretary] *Administrator* shall require any individual who screens passengers and property pursuant to section 44901 to be attired while on duty in a uniform approved by the [Under Secretary] *Administrator*.

[(i)](k) [ACCESSIBILITY OF COMPUTER-BASED TRAINING FACILITIES] *ACCESSIBILITY OF COMPUTER-BASED TRAINING FACILITIES*.—The [Under Secretary] *Administrator* shall work with air carriers and airports to ensure that computer-based training facilities intended for use by security screeners at an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation are conveniently located for that airport and easily accessible.

(l) *DEFINITION OF ADMINISTRATOR*.—In this section, the term “*Administrator*” means the *Administrator of the Transportation Security Administration*.

#### § 44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—

(1)(A) The [Under Secretary of Transportation for Security] *Administrator* shall require by regulation that an employment

investigation, including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the **Under Secretary of Transportation for Transportation Security** *Administrator* [,,], shall be conducted of each individual employed in, or applying for, a position as a security screener under section 44935(e) or a position in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

- (i) aircraft of an air carrier or foreign air carrier; or
- (ii) a secured area of an airport in the United States the **Under Secretary** *Administrator* designates that serves an air carrier or foreign air carrier.

(B) The **Under Secretary** *Administrator* shall require by regulation that an employment investigation (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the **Under Secretary of Transportation for Transportation Security** *Administrator*) be conducted for—

- (i) individuals who are responsible for screening passengers or property under section 44901 of this title;
- (ii) supervisors of the individuals described in clause (i);
- (iii) individuals who regularly have escorted access to aircraft of an air carrier or foreign air carrier or a secured area of an airport in the United States the **Administrator** designates that serves an air carrier or foreign air carrier; and
- (iv) such other individuals who exercise security functions associated with baggage or cargo, as the **Under Secretary** *Administrator* determines is necessary to ensure air transportation security.

**[(C) BACKGROUND CHECKS OF CURRENT EMPLOYEES.—**

**[(i)]** A new background check (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the **Under Secretary of Transportation for Transportation Security** shall be required for any individual who is employed in a position described in subparagraphs (A) and (B) on the date of enactment of the Aviation and Transportation Security Act.

**[(ii)]** The **Under Secretary** may provide by order (without regard to the provisions of chapter 5 of title 5, United States Code) for a phased-in implementation of the requirements of this subparagraph.]

**[(D)](C) EXEMPTION.—**An employment investigation, including a criminal history record check, shall not be required under this subsection for an individual who is exempted under section 107.31(m)(1) or (2) of title 14, Code of Federal Regulations, as in effect on November 22, 2000. The **Under Secretary** *Administrator* shall work with the

International Civil Aviation Organization and with appropriate authorities of foreign countries to ensure that individuals exempted under this subparagraph do not pose a threat to aviation or national security.

(2) An air carrier, foreign air carrier, airport operator, or government that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the **【Under Secretary】 Administrator** requires is conducted.

(3) The **【Under Secretary】 Administrator** shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection.

(b) PROHIBITED EMPLOYMENT.—

(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, airport operator, or government may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted (or found not guilty by reason of insanity) of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed or felony unarmed robbery;

(xii) distribution of, or intent to distribute, a controlled substance;

(xiii) a felony involving a threat;

(xiv) a felony involving—

(I) willful destruction of property;

(II) importation or manufacture of a controlled substance;

(III) burglary;

(IV) theft;

(V) dishonesty, fraud, or misrepresentation;

(VI) possession or distribution of stolen property;

(VII) aggravated assault;

(VIII) bribery; and

(IX) illegal possession of a controlled substance punishable by a maximum term of imprisonment

of more than 1 year, or any other crime classified as a felony that the [Under Secretary] *Administrator* determines indicates a propensity for placing contraband aboard an aircraft in return for money; or

(xv) conspiracy to commit any of the acts referred to in clauses (i) through (xiv).

(2) The [Under Secretary] *Administrator* may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

(3) An air carrier, foreign air carrier, airport operator, or government may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the [Under Secretary] *Administrator* approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—

(1) If the [Under Secretary] *Administrator* requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the [Under Secretary] *Administrator* shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the [Under Secretary] *Administrator* designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the [Under Secretary] *Administrator* shall consult with the Attorney General. All Federal agencies shall cooperate with the [Under Secretary] *Administrator* and the [Under Secretary's] *Administrator's* designee in the process of collecting and submitting fingerprints.

(2) The [Under Secretary] *Administrator* shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

(d) FEES AND CHARGES.—The [Under Secretary] *Administrator* and the Attorney General shall establish reasonable fees and charges to pay expenses incurred in carrying out this section. The employer of the individual being investigated shall pay the costs of a record check of the individual. Money collected under this section shall be credited to the account in the Treasury from which the ex-

penses were incurred and are available to the [Under Secretary] *Administrator* and the Attorney General for those expenses.

(e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.

(f) DEFINITION OF ADMINISTRATOR.—*In this section, the term “Administrator” means the Administrator of the Transportation Security Administration.*

#### **§ 44937. Prohibition on transferring duties and powers**

Except as specifically provided by law, the [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* may not transfer a duty or power under section 44903(a), (b), (c), or (e), 44906, 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.

#### **§ 44938. Reports**

(a) TRANSPORTATION SECURITY.—Not later than March 31 of each year, the [Secretary of Transportation] *Secretary of Homeland Security* shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the biennial report the [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* submits under subsection (b) of this section in each year the [Under Secretary] *Administrator* submits the biennial report, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

(1) an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;

(2) an evaluation of deployment of explosive detection devices;

(3) recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(c) of this title;

(4) identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;

(5) an evaluation of cooperation with foreign transportation and security authorities;

(6) the status of the extent to which the recommendations of the President’s Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;

(7) a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of the report;

(8) financial and staffing requirements of the Director;

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the [Under Secretary] *Administrator* related to security; and

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The [Under Secretary] *Administrator* shall submit biennially to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and

(3) that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the [Under Secretary] *Administrator* decides that Foreign Security Liaison Officers are necessary for air transportation security; and

(B) for which extraordinary security measures are in place.

#### § 44939. Training to operate certain aircraft

(a)\* \* \*

(d) EXPEDITED PROCESSING.—[Not later than 60 days after the date of enactment of this section, the Secretary] *The Secretary of Homeland Security* shall establish a process to ensure that the waiting period under subsection (a) shall not exceed 5 days for an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) who—

(1) holds an airman's certification of a foreign country that is recognized by an agency of the United States, including a military agency, that permits an individual to operate a multi-engine aircraft that has a certificated takeoff weight of more than 12,500 pounds;

(2) is employed by a foreign air carrier that is certified under part 129 of title 14, Code of Federal Regulations, and that has a security program approved under section 1546 of title 49, Code of Federal Regulations;

(3) is an individual that has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii); or

(4) is an individual that is part of a class of individuals that the Secretary has determined that providing aviation training to presents minimal risk to aviation or national security because of the aviation training already possessed by such class of individuals.

(e)\* \* \*

#### § 44940. Security service fee

(a) GENERAL AUTHORITY.—

(1) PASSENGER FEES.—The [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration* shall impose a uniform fee, on passengers of air carriers and foreign air carriers in air transportation and

intrastate air transportation originating at airports in the United States, to pay for the following costs of providing civil aviation security services:

(A) Salary, benefits, overtime, retirement and other costs of screening personnel, their supervisors and managers, and Federal law enforcement personnel deployed at airport security screening locations under section 44901.

(B) The costs of training personnel described in subparagraph (A), and the acquisition, operation, and maintenance of equipment used by such personnel.

(C) The costs of performing background investigations of personnel described in subparagraphs (A), (D), (F), and (G).

(D) The costs of the Federal air marshals program.

(E) The costs of performing civil aviation security research and development under this title.

(F) The costs of Federal Security Managers under section 44903.

(G) The costs of deploying Federal law enforcement personnel pursuant to section 44903(h).

(H) The costs of security-related capital improvements at airports.

(I) The costs of training pilots and flight attendants under sections 44918 and 44921.

【The amount of such costs shall be determined by the Under Secretary and shall not be subject to judicial review. For purposes of subparagraph (A), the term “Federal law enforcement personnel” includes State and local law enforcement officers who are deputized under section 44922.】

(2) *DETERMINATION OF COSTS.*—

(A) *IN GENERAL.*—*The amount of the costs under paragraph (1) shall be determined by the Administrator of the Transportation Security Administration and shall not be subject to judicial review.*

(B) *DEFINITION OF FEDERAL LAW ENFORCEMENT PERSONNEL.*—*For purposes of paragraph (1)(A), the term “Federal law enforcement personnel” includes State and local law enforcement officers who are deputized under section 44922.*

(b) *SCHEDULE OF FEES.*—In imposing fees under subsection (a), the 【Under Secretary】 *Administrator of the Transportation Security Administration* shall ensure that the fees are reasonably related to the Transportation Security Administration’s costs of providing services rendered.

(c) *LIMITATION ON FEE.*—

(1) *AMOUNT.*—Fees imposed under subsection (a)(1) shall be \$5.60 per one-way trip in air transportation or intrastate air transportation that originates at an airport in the United States, except that the fee imposed per round trip shall not exceed \$11.20.

(2) *DEFINITION OF ROUND TRIP.*—In this subsection, the term “round trip” means a trip on an air travel itinerary that terminates or has a stopover at the origin point (or co-terminal).

(3) *OFFSETTING COLLECTIONS.*—*Beginning on October 1, 2025, fees collected under subsection (a)(1) for any fiscal year*

*shall be credited as offsetting collections to appropriations made for aviation security measures carried out by the Transportation Security Administration, to remain available until expended.*

(d) IMPOSITION OF FEE.—

(1) IN GENERAL.—Notwithstanding section 9701 of title 31 and the procedural requirements of section 553 of title 5, the **【Under Secretary】 Administrator of the Transportation Security Administration** shall impose the fee under subsection (a)(1), through the publication of notice of such fee in the Federal Register and begin collection of the fee **【within 60 days of the date of enactment of this Act, or】** as soon as possible **【thereafter】**.

(2) SPECIAL RULES PASSENGER FEES.—A fee imposed under subsection (a)(1) through the procedures under **【subsection (d)】 paragraph (1) of this subsection** shall apply only to tickets sold after the date on which such fee is imposed. If a fee imposed under subsection (a)(1) through the procedures under **【subsection (d)】 paragraph (1) of this subsection** on transportation of a passenger of a carrier described in subsection (a)(1) is not collected from the passenger, the amount of the fee shall be paid by the carrier.

(3) SUBSEQUENT MODIFICATION OF FEE.—After imposing a fee in accordance with paragraph (1), the **【Under Secretary】 Administrator of the Transportation Security Administration** may modify, from time to time through publication of notice in the Federal Register, the imposition or collection of such fee, or both.

(4) LIMITATION ON COLLECTION.—No fee may be collected under this section, other than subsection (i), except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act or in section 44923.

(e) ADMINISTRATION OF FEES.—

(1) **【FEES PAYABLE TO UNDER SECRETARY】 FEES PAYABLE TO ADMINISTRATOR.**—All fees imposed and amounts collected under this section are payable to the **【Under Secretary】 Administrator of the Transportation Security Administration**.

(2) FEES COLLECTED BY AIR CARRIER.—A fee imposed under subsection (a)(1) shall be collected by the air carrier or foreign air carrier that sells a ticket for transportation described in subsection (a)(1).

(3) DUE DATE FOR REMITTANCE.—A fee collected under this section shall be remitted on the last day of each calendar month by the carrier collecting the fee. The amount to be remitted shall be for the calendar month preceding the calendar month in which the remittance is made.

(4) INFORMATION.—The **【Under Secretary】 Administrator of the Transportation Security Administration** may require the provision of such information as the **【Under Secretary】 Administrator of the Transportation Security Administration** decides is necessary to verify that fees have been collected and remitted at the proper times and in the proper amounts.

(5) FEE NOT SUBJECT TO TAX.—For purposes of section 4261 of the Internal Revenue Code of 1986 (26 U.S.C. 4261), a fee

imposed under this section shall not be considered to be part of the amount paid for taxable transportation.

(6) **COST OF COLLECTING FEE.**—No portion of the fee collected under this section may be retained by the air carrier or foreign air carrier for the costs of collecting, handling, or remitting the fee except for interest accruing to the carrier after collection and before remittance.

(f) **RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.**—Notwithstanding section 3302 of title 31, any fee collected under this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(3) shall remain available until expended.

(g) **REFUNDS.**—The **Under Secretary** *Administrator of the Transportation Security Administration* may refund any fee paid by mistake or any amount paid in excess of that required.

(h) **EXEMPTIONS.**—The **Under Secretary** *Administrator of the Transportation Security Administration* may exempt from the passenger fee imposed under subsection (a)(1) any passenger enplaning at an airport in the United States that does not receive screening services under section 44901 for that segment of the trip for which the passenger does not receive screening.

(i) **DEPOSIT OF RECEIPTS IN GENERAL FUND.**—

(1) **IN GENERAL.**—Beginning in fiscal year 2014, out of fees received in a fiscal year under subsection (a)(1), after amounts are made available in the fiscal year under section 44923(h), the next funds derived from such fees in the fiscal year, in the amount specified for the fiscal year in paragraph (4), shall be credited as offsetting receipts and deposited in the general fund of the Treasury.

(2) **FEE LEVELS.**—The Secretary of Homeland Security shall impose the fee authorized by subsection (a)(1) so as to collect in a fiscal year at least the amount specified in paragraph (4) for the fiscal year for making deposits under paragraph (1).

(3) **RELATIONSHIP TO OTHER PROVISIONS.**—Subsections (b) and (f) shall not apply to amounts to be used for making deposits under this subsection.

(4) **FISCAL YEAR AMOUNTS.**—For purposes of paragraphs (1) and (2), the fiscal year amounts are as follows:

**[(A)]** \$390,000,000 for fiscal year 2014.

**[(B)]** \$1,190,000,000 for fiscal year 2015.

**[(C)]** \$1,250,000,000 for fiscal year 2016.

**[(D)]** \$1,280,000,000 for fiscal year 2017.]

**[(E)](A)** \$1,320,000,000 for fiscal year 2018.

**[(F)](B)** \$1,360,000,000 for fiscal year 2019.

**[(G)](C)** \$1,400,000,000 for fiscal year 2020.

**[(H)](D)** \$1,440,000,000 for fiscal year 2021.

**[(I)](E)** \$1,480,000,000 for fiscal year 2022.

**[(J)](F)** \$1,520,000,000 for fiscal year 2023.

**[(K)](G)** \$1,560,000,000 for fiscal year 2024.

**[(L)](H)** \$1,600,000,000 for fiscal year 2025.

**§ 44941. Immunity for reporting suspicious activities**

(a) IN GENERAL.—Any air carrier or foreign air carrier or any employee of an air carrier or foreign air carrier who makes a voluntary disclosure of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism, as defined by section 3077 of title 18, United States Code, to any employee or agent of the Department of Transportation, *the Department of Homeland Security*, the Department of Justice, any Federal, State, or local law enforcement officer, or any airport or airline security officer shall not be civilly liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, for such disclosure.

(b) APPLICATION.—Subsection (a) shall not apply to—

(1) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or

(2) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.

**§ 44942. Performance goals and objectives**

(a) SHORT TERM TRANSITION.—

(1) IN GENERAL.—~~Within 180 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary for Transportation Security may, in consultation with~~ *The Administrator of the Transportation Security Administration may, in consultation with other relevant Federal agencies and Congress—*

(A) establish acceptable levels of performance for aviation security, including screening operations and access control~~], and~~; *and*

(B) provide Congress with an action plan, containing measurable goals and milestones, that outlines how those levels of performance will be achieved.

(2) BASICS OF ACTION PLAN.—The action plan shall clarify the responsibilities of the Transportation Security Administration, the Federal Aviation Administration, and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.

(b) LONG-TERM RESULTS-BASED MANAGEMENT.—

~~[(1) PERFORMANCE PLAN AND REPORT.—]~~

~~[(A)](1) PERFORMANCE PLAN.—~~

~~[(i)](A) Each year, consistent with the requirements of the Government Performance and Results Act of 1993 (GPRA), [the Secretary and the Under Secretary for Transportation Security shall agree] *the Secretary of Homeland Security and the Administrator of the Transportation Security Administration shall agree on a performance plan for the succeeding 5 years that establishes measurable goals and objectives for aviation security. The plan shall identify action steps necessary to achieve such goals.*~~

~~[(ii)](B) In addition to meeting the requirements of GPRA, the performance plan should clarify the responsibilities of [the Secretary, the Under Secretary for Transportation Security] *the Secretary of Homeland Security, the Administrator of the Transportation Security Administra-*~~

tion, and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.

[(B)](2) PERFORMANCE REPORT.—Each year, consistent with the requirements of GPRA, the [Under Secretary for Transportation Security] *Administrator of the Transportation Security Administration* shall prepare and submit to Congress an annual report including an evaluation of the extent goals and objectives were met. The report shall include the results achieved during the year relative to the goals established in the performance plan.

#### § 44943. Performance management system

(a) ESTABLISHING A FAIR AND EQUITABLE SYSTEM FOR MEASURING STAFF PERFORMANCE.—The [Under Secretary for Transportation Security] *Administrator of the Transportation Security Administration* shall establish a performance management system which strengthens the organization's effectiveness by providing for the establishment of goals and objectives for managers, employees, and organizational performance consistent with the performance plan.

(b) ESTABLISHING MANAGEMENT ACCOUNTABILITY FOR MEETING PERFORMANCE GOALS.—

(1) IN GENERAL.—Each year, the [Secretary and Under Secretary of Transportation for Security] *Secretary of Homeland Security and Administrator of the Transportation Security Administration* shall enter into an annual performance agreement that shall set forth organizational and individual performance goals for the [Under Secretary] *Administrator*.

(2) GOALS.—Each year, the [Under Secretary] *Administrator of the Transportation Security Administration* and each senior manager who reports to the [Under Secretary shall] *Administrator shall* enter into an annual performance agreement that sets forth organization and individual goals for those managers. All other employees hired under the authority of the [Under Secretary shall] *Administrator shall* enter into an annual performance agreement that sets forth organization and individual goals for those employees.

(c) PERFORMANCE.—based service contracting. To the extent contracts, if any, are used to implement the [Aviation Security Act, the Under Secretary for Transportation Security] *Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 597)*, the *Administrator of the Transportation Security Administration* shall, to the extent practical, maximize the use of performance-based service contracts. These contracts should be consistent with guidelines published by the Office of Federal Procurement Policy.

#### § 44944. Voluntary provision of emergency services

(a) PROGRAM FOR PROVISION OF VOLUNTARY SERVICES.—

(1) PROGRAM.—The [Under Secretary of Transportation for Transportation Security] *Administrator of the Transportation Security Administration* shall carry out a program to permit qualified law enforcement officers, firefighters, and emergency medical technicians to provide emergency services on commercial air flights during emergencies.

(2) REQUIREMENTS.—The [Under Secretary] *Administrator of the Transportation Security Administration* shall establish such requirements for qualifications of providers of voluntary services under the program under paragraph (1), including training requirements, as the [Under Secretary] *Administrator of the Transportation Security Administration* considers appropriate.

(3) CONFIDENTIALITY OF REGISTRY.—If as part of the program under paragraph (1) the [Under Secretary] *Administrator of the Transportation Security Administration* requires or permits registration of law enforcement officers, firefighters, or emergency medical technicians who are willing to provide emergency services on commercial flights during emergencies, the [Under Secretary] *Administrator of the Transportation Security Administration* shall take appropriate actions to ensure that the registry is available only to appropriate airline personnel and otherwise remains confidential.

(4) CONSULTATION.—The [Under Secretary] *Administrator of the Transportation Security Administration* shall consult with the *Administrator of the Federal Aviation Administration*, appropriate representatives of the commercial airline industry, and organizations representing community-based law enforcement, firefighters, and emergency medical technicians, in carrying out the program under paragraph (1), including the actions taken under paragraph (3).

(b) EXEMPTION FROM LIABILITY.—An individual shall not be liable for damages in any action brought in a Federal or State court that arises from an act or omission of the individual in providing or attempting to provide assistance in the case of an in-flight emergency in an aircraft of an air carrier if the individual meets such qualifications as the [Under Secretary] *Administrator of the Transportation Security Administration* shall prescribe for purposes of this section.

(c) EXCEPTION.—The exemption under subsection (b) shall not apply in any case in which an individual provides, or attempts to provide, assistance described in that paragraph in a manner that constitutes gross negligence or willful misconduct.

#### **§ 44945. Disposition of unclaimed money and clothing**

(a) DISPOSITION OF UNCLAIMED MONEY.—Notwithstanding section 3302 of title 31, unclaimed money recovered at any airport security checkpoint shall be retained by the Transportation Security Administration and shall remain available until expended for the purpose of providing civil aviation security as required in this chapter.

(b) DISPOSITION OF UNCLAIMED CLOTHING.—

(1) IN GENERAL.—In disposing of unclaimed clothing recovered at any airport security checkpoint, the [Assistant Secretary] *Administrator of the Transportation Security Administration* shall make every reasonable effort, in consultation with the Secretary of Veterans Affairs, to transfer the clothing to the local airport authority or other local authorities for donation to charity, including local veterans organizations or other local charitable organizations for distribution to homeless or needy veterans and veteran families.

(2) AGREEMENTS.—In implementing paragraph (1), the [Assistant Secretary] *Administrator of the Transportation Security Administration* may enter into agreements with airport authorities.

(3) OTHER CHARITABLE ARRANGEMENTS.—Nothing in this subsection shall prevent an airport or the Transportation Security Administration from donating unclaimed clothing to a charitable organization of their choosing.

(4) LIMITATION.—Nothing in this subsection shall create a cost to the Government.

#### § 44946. Aviation Security Advisory Committee

(a) ESTABLISHMENT.—The [Assistant Secretary] *Administrator* shall establish within the Transportation Security Administration an aviation security advisory committee.

(b) DUTIES.—

(1) IN GENERAL.—The [Assistant Secretary] *Administrator* shall consult the Advisory Committee, as appropriate, on aviation security matters, including on the development, refinement, and implementation of policies, programs, rulemaking, and security directives pertaining to aviation security, while adhering to sensitive security guidelines.

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The Advisory Committee shall develop, at the request of the [Assistant Secretary] *Administrator*, recommendations for improvements to aviation security.

(B) RECOMMENDATIONS OF SUBCOMMITTEES.—Recommendations agreed upon by the subcommittees established under this section shall be approved by the Advisory Committee before transmission to the [Assistant Secretary] *Administrator*.

(3) PERIODIC REPORTS.—The Advisory Committee shall periodically submit to the [Assistant Secretary] *Administrator*—

(A) reports on matters identified by the [Assistant Secretary] *Administrator*; and

(B) reports on other matters identified by a majority of the members of the Advisory Committee.

(4) ANNUAL REPORT.—The Advisory Committee shall submit to the [Assistant Secretary] *Administrator* an annual report providing information on the activities, findings, and recommendations of the Advisory Committee, including its subcommittees, for the preceding year. Not later than 6 months after the date that [the Secretary receives] *the Administrator receives* the annual report, [the Secretary shall] *the Administrator shall* publish a public version describing the Advisory Committee's activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5.

(5) FEEDBACK.—Not later than 90 days after receiving recommendations transmitted by the Advisory Committee under paragraph (2) or (4), the [Assistant Secretary] *Administrator* shall respond in writing to the Advisory Committee with feedback on each of the recommendations, an action plan to implement any of the recommendations with which the [Assistant

Secretary] *Administrator* concurs, and a justification for why any of the recommendations have been rejected.

(6) CONGRESSIONAL NOTIFICATION.—Not later than 30 days after providing written feedback to the Advisory Committee under paragraph (5), the [Assistant Secretary] *Administrator* shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives on such feedback, and provide a briefing upon request.

(7) REPORT TO CONGRESS.—Prior to briefing the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives under paragraph (6), the [Assistant Secretary] *Administrator* shall submit to such committees a report containing information relating to the recommendations transmitted by the Advisory Committee in accordance with paragraph (4).

(c) MEMBERSHIP.—

(1) APPOINTMENT.—

(A) IN GENERAL.—[Not later than 180 days after the date of enactment of the Aviation Security Stakeholder Participation Act of 2014, the] *The* [Assistant Secretary] *Administrator* shall appoint the members of the Advisory Committee.

(B) COMPOSITION.—The membership of the Advisory Committee shall consist of individuals representing not more than 34 member organizations. Each organization shall be represented by 1 individual (or the individual's designee).

(C) REPRESENTATION.—The membership of the Advisory Committee shall include representatives of air carriers, all-cargo air transportation, indirect air carriers, labor organizations representing air carrier employees, labor organizations representing transportation security officers, aircraft manufacturers, airport operators, airport construction and maintenance contractors, labor organizations representing employees of airport construction and maintenance contractors, general aviation, privacy organizations, the travel industry, airport-based businesses (including minority-owned small businesses), businesses that conduct security screening operations at airports, aeronautical repair stations, passenger advocacy groups, the aviation security technology industry (including screening technology and biometrics), victims of terrorist acts against aviation, and law enforcement and security experts.

(2) TERM OF OFFICE.—

(A) TERMS.—The term of each member of the Advisory Committee shall be two years, but a member may continue to serve until a successor is appointed. A member of the Advisory Committee may be reappointed.

(B) REMOVAL.—The [Assistant Secretary] *Administrator* may review the participation of a member of the Advisory Committee and remove such member for cause at any time.

(3) PROHIBITION ON COMPENSATION.—The members of the Advisory Committee shall not receive pay, allowances, or benefits from the Government by reason of their service on the Advisory Committee.

(4) MEETINGS.—

(A) IN GENERAL.—The [Assistant Secretary] *Administrator* shall require the Advisory Committee to meet at least semiannually and may convene additional meetings as necessary.

(B) PUBLIC MEETINGS.—At least 1 of the meetings described in subparagraph (A) shall be open to the public.

(C) ATTENDANCE.—The Advisory Committee shall maintain a record of the persons present at each meeting.

(5) MEMBER ACCESS TO SENSITIVE SECURITY INFORMATION.—Not later than 60 days after the date of a member's appointment, the [Assistant Secretary] *Administrator* shall determine if there is cause for the member to be restricted from possessing sensitive security information. Without such cause, and upon the member voluntarily signing a non-disclosure agreement, the member may be granted access to sensitive security information that is relevant to the member's advisory duties. The member shall protect the sensitive security information in accordance with part 1520 of title 49, Code of Federal Regulations.

(6) CHAIRPERSON.—A stakeholder representative on the Advisory Committee who is elected by the appointed membership of the Advisory Committee shall chair the Advisory Committee.

(d) SUBCOMMITTEES.—

(1) MEMBERSHIP.—The Advisory Committee chairperson, in coordination with the [Assistant Secretary] *Administrator*, may establish within the Advisory Committee any subcommittee that the [Assistant Secretary] *Administrator* and Advisory Committee determine to be necessary. The [Assistant Secretary] *Administrator* and the Advisory Committee shall create subcommittees to address aviation security issues, including the following:

(A) AIR CARGO SECURITY.—The implementation of the air cargo security programs established by the Transportation Security Administration to screen air cargo on passenger aircraft and all-cargo aircraft in accordance with established cargo screening mandates.

(B) GENERAL AVIATION.—General aviation facilities, general aviation aircraft, and helicopter operations at general aviation and commercial service airports.

(C) PERIMETER AND ACCESS CONTROL.—Recommendations on airport perimeter security, exit lane security and technology at commercial service airports, and access control issues.

(D) SECURITY TECHNOLOGY.—Security technology standards and requirements, including their harmonization internationally, technology to screen passengers, passenger baggage, carry-on baggage, and cargo, and biometric technology.

(2) RISK-BASED SECURITY.—All subcommittees established by the Advisory Committee chairperson in coordination with the

【Assistant Secretary】 *Administrator* shall consider risk-based security approaches in the performance of their functions that weigh the optimum balance of costs and benefits in transportation security, including for passenger screening, baggage screening, air cargo security policies, and general aviation security matters.

(3) MEETINGS AND REPORTING.—Each subcommittee shall meet at least quarterly and submit to the Advisory Committee for inclusion in the annual report required under subsection (b)(4) information, including recommendations, regarding issues within the subcommittee.

(4) SUBCOMMITTEE CHAIRS.—Each subcommittee shall be co-chaired by a Government official and an industry official.

(e) SUBJECT MATTER EXPERTS.—Each subcommittee under this section shall include subject matter experts with relevant expertise who are appointed by the respective subcommittee chairpersons.

(f) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee and its subcommittees.

(g) DEFINITIONS.—In this section:

(1) *ADMINISTRATOR*.—The term “Administrator” means the Administrator of the Transportation Security Administration.

【(1)】(2) *ADVISORY COMMITTEE*.—The term “Advisory Committee” means the aviation security advisory committee established under subsection (a).

【(2) *ASSISTANT SECRETARY*.—The term “Assistant Secretary” means the Assistant Secretary of Homeland Security (Transportation Security Administration).】

(3) *PERIMETER SECURITY*.—

(A) *IN GENERAL*.—The term “perimeter security” means procedures or systems to monitor, secure, and prevent unauthorized access to an airport, including its airfield and terminal.

(B) *INCLUSIONS*.—The term “perimeter security” includes the fence area surrounding an airport, access gates, and access controls.

## TITLE 49. TRANSPORTATION

### SUBTITLE VII. AVIATION PROGRAMS

#### PART A. AIR COMMERCE AND SAFETY

##### SUBPART III. SAFETY

###### CHAPTER 451. ALCOHOL AND CONTROLLED SUBSTANCES TESTING

### § 45107. Transportation Security Administration

(a) *TRANSFER OF FUNCTIONS RELATING TO TESTING PROGRAMS WITH RESPECT TO AIRPORT SECURITY SCREENING PERSONNEL*.—The authority of the Administrator of the Federal Aviation Administration under this chapter with respect to programs relating to testing of airport security screening personnel are transferred to the 【Under Secretary of Transportation for Security】 *Administrator of the Transportation Security Administration*. Notwithstanding section 45102(a), the regulations prescribed under section 45102(a)

shall require testing of such personnel by their employers instead of by air carriers and foreign air carriers.

(b) **APPLICABILITY OF CHAPTER WITH RESPECT TO EMPLOYEES OF ADMINISTRATION.**—The provisions of this chapter that apply with respect to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions shall apply with respect to employees of the Transportation Security Administration whose duties include responsibility for security-sensitive functions. The **Under Secretary of Transportation for Security** *Administrator of the Transportation Security Administration*, the Transportation Security Administration, and employees of the Transportation Security Administration whose duties include responsibility for security-sensitive functions shall be subject to and comply with such provisions in the same manner and to the same extent as the Administrator of the Federal Aviation Administration, the Federal Aviation Administration, and employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions, respectively.

## TITLE 49. TRANSPORTATION

### SUBTITLE VII. AVIATION PROGRAMS

#### PART A. AIR COMMERCE AND SAFETY

##### SUBPART IV. ENFORCEMENT AND PENALTIES

##### CHAPTER 461. INVESTIGATIONS AND PROCEEDINGS

#### **§ 46101. Complaints and investigations**

##### (a) **GENERAL.**—

(1) A person may file a complaint in writing with the Secretary of Transportation (or the **Under Secretary of Transportation for Security** with respect to security duties and powers designated to be carried out by the **Under Secretary**) *Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration* or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out **by the Administrator**) *by the Administrator of the Federal Aviation Administration*) about a person violating this part or a requirement prescribed under this part. Except as provided in subsection (b) of this section, the Secretary, **Under Secretary,** *Administrator of the Transportation Security Administration,* **or Administrator** *or Administrator of the Federal Aviation Administration* shall investigate the complaint if a reasonable ground appears to the Secretary, **Under Secretary,** *Administrator of the Transportation Security Administration,* **or Administrator** *or Administrator of the Federal Aviation Administration* for the investigation.

(2) On the initiative of the Secretary of Transportation or the Administrator, as appropriate, the Secretary, **Under Secretary,** *Administrator of the Transportation Security Administration,* **or Administrator** *or Administrator of the Federal Aviation Administration* may conduct an investigation, if a reasonable ground appears to the Secretary **or Administrator** *or*

*Administrator of the Federal Aviation Administration* for the investigation, about—

(A) a person violating this part or a requirement prescribed under this part or

(B) any question that may arise under this part.

(3) The Secretary of Transportation, **Under Secretary,** *Administrator of the Transportation Security Administration*, **or Administrator** *or Administrator of the Federal Aviation Administration* may dismiss a complaint without a hearing when the Secretary, **Under Secretary,** *Administrator of the Transportation Security Administration*, **or Administrator** *or Administrator of the Federal Aviation Administration* is of the opinion that the complaint does not state facts that warrant an investigation or action.

(4) After notice and an opportunity for a hearing and subject to section 40105(b) of this title, the Secretary of Transportation, **Under Secretary,** *Administrator of the Transportation Security Administration*, **or Administrator** *or Administrator of the Federal Aviation Administration* shall issue an order to compel compliance with this part if the Secretary, **Under Secretary,** *Administrator of the Transportation Security Administration*, **or Administrator** *or Administrator of the Federal Aviation Administration* finds in an investigation under this subsection that a person is violating this part.

(b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Secretary of Transportation, **Under Secretary,** *Administrator of the Transportation Security Administration*, **or Administrator** *or Administrator of the Federal Aviation Administration* shall refer a complaint against a member of the armed forces of the United States performing official duties to the Secretary of the department concerned for action. Not later than 90 days after receiving the complaint, the Secretary of that department shall inform the Secretary of Transportation, **Under Secretary,** *Administrator of the Transportation Security Administration*, **or Administrator** *or Administrator of the Federal Aviation Administration* of the action taken on the complaint, including any corrective or disciplinary action taken.

#### **§ 46102. Proceedings**

(a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5 of title 5, the Secretary of Transportation (or the **Under Secretary of Transportation for Security** with respect to security duties and powers designated to be carried out by the **Under Secretary** *Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration* or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out **by the Administrator**) *by the Administrator of the Federal Aviation Administration*) may conduct proceedings in a way conducive to justice and the proper dispatch of business.

(b) APPEARANCE.—A person may appear and be heard before the Secretary, the **Under Secretary,** *Administrator of the Transportation Security Administration*, and **the Administrator** *the Administrator of the Federal Aviation Administration* in person or by

an attorney. The Secretary may appear and participate as an interested party in a proceeding ~~the Administrator~~ *the Administrator of the Federal Aviation Administration* conducts under section 40113(a) of this title.

(c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Secretary, ~~Under Secretary,~~ *Administrator of the Transportation Security Administration*, ~~and Administrator~~ *and Administrator of the Federal Aviation Administration* under this part shall be recorded. Proceedings before the Secretary, ~~Under Secretary~~ *Administrator of the Transportation Security Administration*, ~~and Administrator~~ *and Administrator of the Federal Aviation Administration* shall be open to the public on the request of an interested party unless the Secretary, ~~Under Secretary,~~ *Administrator of the Transportation Security Administration*, ~~or Administrator~~ *or Administrator of the Federal Aviation Administration* decides that secrecy is required because of national defense.

(d) CONFLICTS OF INTEREST.—The Secretary, the ~~Under Secretary,~~ *Administrator of the Transportation Security Administration*, ~~the Administrator, or an officer or employee of the Administration~~ *The Administrator of the Federal Aviation Administration, or an officer or employee of the Federal Aviation Administration* may not participate in a proceeding referred to in subsection (a) of this section in which the individual has a pecuniary interest.

### **§ 46103. Service of notice, process, and actions**

#### **(a) DESIGNATING AGENTS.—**

(1) Each air carrier and foreign air carrier shall designate an agent on whom service of notice and process in a proceeding before, and an action of, the Secretary of Transportation (or the ~~Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary~~ *Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration* or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out ~~by the Administrator~~) *by the Administrator of the Federal Aviation Administration*) may be made.

#### **(2) THE DESIGNATION.—**

(A) shall be in writing and filed with the Secretary, ~~Under Secretary,~~ *Administrator of the Transportation Security Administration*, ~~or Administrator~~ *or Administrator of the Federal Aviation Administration*; and

(B) may be changed in the same way as originally made.

#### **(b) SERVICE.—**

##### **(1) Service may be made—**

(A) by personal service;

(B) on a designated agent; or

(C) by certified or registered mail to the person to be served or the designated agent of the person.

(2) The date of service made by certified or registered mail is the date of mailing.

(c) SERVING AGENTS.—Service on an agent designated under this section shall be made at the office or usual place of residence of the

agent. If an air carrier or foreign air carrier does not have a designated agent, service may be made by posting the notice, process, or action in the office of the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator]** or *Administrator of the Federal Aviation Administration*.

#### **§ 46104. Evidence**

(a) **GENERAL.**—In conducting a hearing or investigation under this part, the Secretary of Transportation (or the **[Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary] Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration** or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out **[by the Administrator]** by the *Administrator of the Federal Aviation Administration*) may—

- (1) **[subpena] subpoena** witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation;
- (2) administer oaths;
- (3) examine witnesses; and
- (4) receive evidence at a place in the United States the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator]** or *Administrator of the Federal Aviation Administration* designates.

(b) **COMPLIANCE WITH [SUBPENAS] SUBPOENAS.**—If a person disobeys a **[subpena] subpoena**, the Secretary, the **[Under Secretary,] Administrator of the Transportation Security Administration, [the Administrator, or] the Administrator of the Federal Aviation Administration**, or a party to a proceeding before the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator]** or *Administrator of the Federal Aviation Administration* may petition a court of the United States to enforce the **[subpena] subpoena**. A judicial proceeding to enforce a **[subpena] subpoena** under this section may be brought in the jurisdiction in which the proceeding or investigation is conducted. The court may punish a failure to obey an order of the court to comply with the **[subpena] subpoena** as a contempt of court.

(c) **DEPOSITIONS.**—

- (1) In a proceeding or investigation, the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator]** or *Administrator of the Federal Aviation Administration* may order a person to give testimony by deposition and to produce records. If a person fails to be deposed or to produce records, the order may be enforced in the same way a **[subpena] subpoena** may be enforced under subsection (b) of this section.

(2) A deposition may be taken before an individual designated by the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Adminis-**

trator] or Administrator of the Federal Aviation Administration and having the power to administer oaths.

(3) Before taking a deposition, the party or the attorney of the party proposing to take the deposition must give reasonable notice in writing to the opposing party or the attorney of record of that party. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration.

(5) If the laws of a foreign country allow, the testimony of a witness in that country may be taken by deposition—

(A) by a consular officer or an individual commissioned by the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration or agreed on by the parties by written stipulation filed with the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration; or

(B) under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration.

(d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EXPENSES.—A witness summoned before the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration or whose deposition is taken under this section and the individual taking the deposition are each entitled to the same fee and mileage that the witness and individual would have been paid for those services in a court of the United States. Under regulations of the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration, the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration shall pay the necessary expenses incident to executing, in another country, a commission or letter rogatory issued at the initiative of the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration.

(e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When designated by the Secretary, [Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration, an employee appointed under section 3105 of title 5 may conduct a hearing,

**[subpena]** *subpoena* witnesses, administer oaths, examine witnesses, and receive evidence at a place in the United States the Secretary, **[Under Secretary,]** *Administrator of the Transportation Security Administration*, **[or Administrator]** or *Administrator of the Federal Aviation Administration* designates. On request of a party, the Secretary, **[Under Secretary,]** *Administrator of the Transportation Security Administration*, **[or Administrator]** or *Administrator of the Federal Aviation Administration* shall hear or receive argument.

#### **§ 46105. Regulations and orders**

(a) **EFFECTIVENESS OF ORDERS.**—Except as provided in this part, a regulation prescribed or order issued by the Secretary of Transportation (or the **[Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary]** *Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration* or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out **[by the Administrator]**) by the *Administrator of the Federal Aviation Administration*) takes effect within a reasonable time prescribed by the Secretary, **[Under Secretary,]** *Administrator of the Transportation Security Administration*, **[or Administrator]** or *Administrator of the Federal Aviation Administration*. The regulation or order remains in effect under its own terms or until superseded. Except as provided in this part, the Secretary, **[Under Secretary,]** *Administrator of the Transportation Security Administration*, **[or Administrator]** or *Administrator of the Federal Aviation Administration* may amend, modify, or suspend an order in the way, and by giving the notice, the Secretary, **[Under Secretary,]** *Administrator of the Transportation Security Administration*, **[or Administrator]** or *Administrator of the Federal Aviation Administration* decides.

(b) **CONTENTS AND SERVICE OF ORDERS.**—An order of the Secretary, **[Under Secretary,]** *Administrator of the Transportation Security Administration*, **[or Administrator]** or *Administrator of the Federal Aviation Administration* shall include the findings of fact on which the order is based and shall be served on the parties to the proceeding and the persons affected by the order.

(c) **EMERGENCIES.**—**[When the Administrator]** *When the Administrator of the Federal Aviation Administration* is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to this part and subchapter II of chapter 5 of title 5. The Administrator shall begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.

#### **§ 46106. Enforcement by the Department of Transportation**

The Secretary of Transportation (or the **[Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary]** *Ad-*

*ministrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out [by the Administrator] by the Administrator of the Federal Aviation Administration)* may bring a civil action against a person in a district court of the United States to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part. The action may be brought in the judicial district in which the person does business or the violation occurred.

#### **§ 46107. Enforcement by the Attorney General**

(a) CIVIL ACTIONS TO ENFORCE SECTION 40106(B).—The Attorney General may bring a civil action in a district court of the United States against a person to enforce section 40106(b) of this title. The action may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS TO ENFORCE THIS PART.—

(1) On request of the Secretary of Transportation (or the [Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary] *Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration* or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out [by the Administrator] *by the Administrator of the Federal Aviation Administration*), the Attorney General may bring a civil action in an appropriate court—

(A) to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part ; and

(B) to prosecute a person violating this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

(2) The costs and expenses of a civil action shall be paid out of the appropriations for the expenses of the courts of the United States.

(c) PARTICIPATION OF SECRETARY, [UNDER SECRETARY,] *ADMINISTRATOR OF THE TRANSPORTATION SECURITY ADMINISTRATION, [OR ADMINISTRATOR] OR ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION*.—On request of the Attorney General, the Secretary, [Under Secretary,] *Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration*, as appropriate, may participate in a civil action under this part.

#### **§ 46108. Enforcement of certificate requirements by interested persons**

An interested person may bring a civil action in a district court of the United States against a person to enforce section 41101(a)(1)

of this title. The action may be brought in the judicial district in which the defendant does business or the violation occurred.

#### **§ 46109. Joinder and intervention**

A person interested in or affected by a matter under consideration in a proceeding before the Secretary of Transportation (*or the Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator*) or civil action to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part may be joined as a party or permitted to intervene in the proceeding or civil action.

#### **§ 46110. Judicial review**

(a) FILING AND VENUE.—Except for an order related to a foreign air carrier subject to disapproval by the President under section 41307 or 41509(f) of this title, a person disclosing a substantial interest in an order issued by the Secretary of Transportation (*or the [Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary] Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration or the Administrator of the Federal Aviation Administration with respect to aviation duties and powers designated to be carried out [by the Administrator] by the Administrator of the Federal Aviation Administration*) in whole or in part under this part, part B, or subsection (l) or (s) of section 114 may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary, *[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration*, as appropriate. The Secretary, *[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration* shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.

(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary, *[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration*, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary, *[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or*

*Administrator of the Federal Aviation Administration* to conduct further proceedings. After reasonable notice to the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration**, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration**, if supported by substantial evidence, are conclusive.

(d) **REQUIREMENT FOR PRIOR OBJECTION.**—In reviewing an order under this section, the court may consider an objection to an order of the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration** only if the objection was made in the proceeding conducted by the Secretary, **[Under Secretary,] Administrator of the Transportation Security Administration, [or Administrator] or Administrator of the Federal Aviation Administration** or if there was a reasonable ground for not making the objection in the proceeding.

(e) **SUPREME COURT REVIEW.**—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

#### **§ 46111. Certificate actions in response to a security threat**

(a) **ORDERS.**—The Administrator of *the Federal Aviation Administration* shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the **[Administrator is] Administrator of the Federal Aviation Administration** is notified by the **[Under Secretary for Border and Transportation Security of the Department of Homeland Security] Administrator of the Transportation Security Administration** that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. If requested by the **[Under Secretary] Administrator of the Transportation Security Administration**, the order shall be effective immediately.

(b) **HEARINGS FOR CITIZENS.**—An individual who is a citizen of the United States who is adversely affected by an order of the **[Administrator] Administrator of the Federal Aviation Administration** under subsection (a) is entitled to a hearing on the record.

(c) **HEARINGS.**—When conducting a hearing under this section, the administrative law judge shall not be bound by findings of fact or interpretations of laws and regulations of the **[Administrator] Administrator of the Federal Aviation Administration** or the **[Under Secretary] Administrator of the Transportation Security Administration**.

(d) **APPEALS.**—An appeal from a decision of an administrative law judge as the result of a hearing under subsection (b) shall be made to the Transportation Security Oversight Board established by section 115. The Board shall establish a panel to review the decision. The members of this panel (1) shall not be employees of the Transportation Security Administration, (2) shall have the level of security clearance needed to review the determination made under

this section, and (3) shall be given access to all relevant documents that support that determination. The panel may affirm, modify, or reverse the decision.

(e) REVIEW.—A person substantially affected by an action of a panel under subsection (d), or the **Under Secretary** *Administrator of the Transportation Security Administration* when the **Under Secretary** *Administrator of the Transportation Security Administration* decides that the action of the panel under this section will have a significant adverse impact on carrying out this part, may obtain review of the order under section 46110. The **Under Secretary** *Administrator of the Transportation Security Administration* and the **Administrator** *Administrator of the Federal Aviation Administration* shall be made a party to the review proceedings. Findings of fact of the panel are conclusive if supported by substantial evidence.

(f) EXPLANATION OF DECISIONS.—An individual who commences an appeal under this section shall receive a written explanation of the basis for the determination or decision and all relevant documents that support that determination to the maximum extent that the national security interests of the United States and other applicable laws permit.

(g) CLASSIFIED EVIDENCE.—

(1) IN GENERAL.—The **Under Secretary** *Administrator of the Transportation Security Administration*, in consultation with the **Administrator** *Administrator of the Federal Aviation Administration* and the Director of Central Intelligence, shall issue regulations to establish procedures by which the **Under Secretary** *Administrator of the Transportation Security Administration*, as part of a hearing conducted under this section, may provide an unclassified summary of classified evidence upon which the order of the **Administrator** *Administrator of the Federal Aviation Administration* was based to the individual adversely affected by the order.

(2) REVIEW OF CLASSIFIED EVIDENCE BY ADMINISTRATIVE LAW JUDGE.—

(A) REVIEW.—As part of a hearing conducted under this section, if the order of the **Administrator** *Administrator of the Federal Aviation Administration* issued under subsection (a) is based on classified information (as defined in section 1(a) of the Classified Information Procedures Act **[(18 U.S.C. App.)]** *(18 U.S.C. App.)*), such information may be submitted by the **Under Secretary** *Administrator of the Transportation Security Administration* to the reviewing administrative law judge, pursuant to appropriate security procedures, and shall be reviewed by the administrative law judge *ex parte* and *in camera*.

(B) SECURITY CLEARANCES.—Pursuant to existing procedures and requirements, the **Under Secretary** *Administrator of the Transportation Security Administration* shall, in coordination, as necessary, with the heads of other affected departments or agencies, ensure that administrative law judges reviewing orders of the **Administrator** *Administrator of the Federal Aviation Administration* under this section possess security clearances appropriate for their work under this section.

(3) UNCLASSIFIED SUMMARIES OF CLASSIFIED EVIDENCE.—As part of a hearing conducted under this section and upon the request of the individual adversely affected by an order of the [Administrator] *Administrator of the Federal Aviation Administration* under subsection (a), the [Under Secretary] *Administrator of the Transportation Security Administration* shall provide to the individual and reviewing administrative law judge, consistent with the procedures established under paragraph (1), an unclassified summary of any classified information upon which the order of the [Administrator] *Administrator of the Federal Aviation Administration* is based.

## TITLE 49. TRANSPORTATION

### SUBTITLE VII. AVIATION PROGRAMS

#### PART A. AIR COMMERCE AND SAFETY

#### SUBPART IV. ENFORCEMENT AND PENALTIES

#### CHAPTER 463. PENALTIES

### § 46301. Civil Penalties

#### (a) GENERAL PENALTY.—

(1) A person is liable to the United States Government for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 423, chapter 441 (except section 44109), 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), and 44908), chapter 451, section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 shall be \$10,000; except that the maximum civil penalty shall be \$ 25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS CONCERNS.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 (except sections 44717-44723), chapter 449 (except sections 44902, 44903(d), 44904, and 44907-44909), [or chapter 451] *chapter 451*, or section 46314(a) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

(i) the transportation of hazardous material;

(ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;

(iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be \$5,000 instead of \$1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary of *Transportation* by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be \$2,500 for each violation.

(b) SMOKE ALARM DEVICE PENALTY.—

(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—

(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, chapter 423, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—

(1) IN THIS SUBSECTION.—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), section 46301(b), section 46302 (for a violation relating to section 46504), section 46318, section 46319, section 46320, or section 47107(b) (as further [defined by the Secretary] *defined by the Secretary of Transportation* under section 47107(k) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909), section 46302 (except for a violation relating to section 46504), or section 46303 of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security or [Administrator shall] *Administrator of the Federal Aviation Administration shall* give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security or [Administrator] *Administrator of the Federal Aviation Administration* under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Secretary of Homeland Security or **Administrator** *Administrator of the Federal Aviation Administration* initiates if—

(A) the amount in controversy is more than—

(i) \$50,000 if the violation was committed by any person before the date of enactment of the vision 100—Century of Aviation Reauthorization Act;

(ii) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) \$50,000 if the violation was committed by an individual or small business concern on or after that date;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)

(A) The **Administrator** *Administrator of the Federal Aviation Administration* may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the **Administrator** *Administrator of the Federal Aviation Administration* relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the **Administrator** *Administrator of the Federal Aviation Administration* but is bound by all validly adopted interpretations of laws and regulations the **Administrator** *Administrator of the Federal Aviation Administration* carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the **Administrator** *Administrator of the Federal Aviation Administration* is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the **Administrator** *Administrator of the Federal Aviation Administration*

when the **Administrator** *Administrator of the Federal Aviation Administration* decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The **Administrator** *Administrator of the Federal Aviation Administration* shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The **Administrator** *Administrator of the Federal Aviation Administration* may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the **Administrator** *Administrator of the Federal Aviation Administration* shall consider only whether—

- (i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;
- (ii) each conclusion of law is made according to applicable law, precedent, and public policy; and
- (iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

- (i) a civil penalty shall not be assessed against an individual;
- (ii) a civil penalty may be compromised as provided under subsection (f); and
- (iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the **Under Secretary** *Administrator of the Transportation Security Administration*, **Administrator** *Administrator of the Federal Aviation Administration*, or Board may impose under this subsection is—

(A) \$50,000 if the violation was committed by any person before the date of enactment of the vision 100—Century of Aviation Reauthorization Act;

(B) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(C) \$50,000 if the violation was committed by an individual or small business concern on or after that date.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) **PENALTY CONSIDERATIONS.**—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary of *Transportation* shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—

(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), 44908, and 44909), or chapter 451 of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the Secretary or the [Administrator] *Administrator of the Federal Aviation Administration* imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—

(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the [Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary] *Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration* [or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator] *or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator of the Federal Aviation Administration*) a timely report on action taken.

(i) SMALL BUSINESS CONCERN DEFINED.—In this section, the term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

#### § 46304. Liens on aircraft

(a) AIRCRAFT SUBJECT TO LIENS.—When an aircraft is involved in a violation referred to in section 46301(a)(1)(A)-(C) of this title and the violation is by the owner of, or individual commanding, the aircraft, the aircraft is subject to a lien for the civil penalty.

(b) SEIZURE.—An aircraft subject to a lien under this section may be seized summarily and placed in the custody of a person authorized to take custody of it under regulations of the Secretary of Transportation (for the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator] or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator of the Federal Aviation Administration). A report on the seizure shall be submitted to the Attorney General. The Attorney General promptly shall bring a civil action in rem to enforce the lien or notify the Secretary or Administrator that the action will not be brought.

(c) RELEASE.—An aircraft seized under subsection (b) of this section shall be released from custody when—

- (1) the civil penalty is paid;
- (2) a compromise amount agreed on is paid;
- (3) the aircraft is seized under a civil action in rem to enforce the lien;
- (4) the Attorney General gives notice that a civil action will not be brought under subsection (b) of this section; or
- (5) a bond (in an amount and with a surety the Secretary or Administrator prescribes), conditioned on payment of the penalty or compromise, is deposited with the Secretary or Administrator.

#### § 46311. Unlawful disclosure of information

(a) CRIMINAL PENALTY.—The Secretary of Transportation, the [Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary] Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration, [the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator] or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator of the Federal Aviation Administration, or an officer or employee of the Secretary, [Under Secretary] Administrator of the Transportation Security Administration, or [Administrator shall] Administrator of the Federal Aviation Administration shall be fined under title 18, imprisoned for not more than 2 years, or both, if the Secretary, [Under Secretary] Administrator of the Transportation Security Administration, [Administrator,] Administrator of the Federal Aviation Administration, officer, or employee knowingly and willfully discloses information that—

- (1) the Secretary, [Under Secretary] Administrator of the Transportation Security Administration, [Administrator] Administrator of the Federal Aviation Administration, officer, or

employee acquires when inspecting the records of an air carrier; or

(2) is withheld from public disclosure under section 40115 of this title.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

(1) the officer or employee is directed by the Secretary, *Administrator of the Transportation Security Administration*, or *Administrator of the Federal Aviation Administration* to disclose information that the Secretary, *Administrator of the Transportation Security Administration*, or *Administrator of the Federal Aviation Administration* had ordered withheld; or

(2) the Secretary, *Administrator of the Transportation Security Administration*, *Administrator of the Federal Aviation Administration*, officer, or employee is directed by a court of competent jurisdiction to disclose the information.

(c) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize the Secretary, *Administrator of the Transportation Security Administration*, or *Administrator of the Federal Aviation Administration* to withhold information from a committee of Congress authorized to have the information.

#### **§ 46313. Refusing to appear or produce records**

A person not obeying a *subpoena* or requirement of the Secretary of Transportation (or the *Administrator of the Transportation Security Administration* with respect to security duties and powers designated to be carried out by the *Administrator of the Transportation Security Administration* [or the *Administrator of the Federal Aviation Administration* with respect to aviation safety duties and powers designated to be carried out by the *Administrator of the Federal Aviation Administration* with respect to aviation safety duties and powers designated to be carried out by the *Administrator of the Federal Aviation Administration*) to appear and testify or produce records shall be fined under title 18, imprisoned for not more than one year, or both.

#### **§ 46316. General criminal penalty when specific penalty not provided**

(a) CRIMINAL PENALTY.—Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates this part, a regulation prescribed or order issued by the Secretary of Transportation (or the *Administrator of the Transportation Security Administration* with respect to security duties and powers designated to be carried out by the *Administrator of the Transportation Security Administration* [or the *Administrator of the*

the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator] or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator of the Federal Aviation Administration) under this part, or any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), chapter 445, chapter 447 (except section 44718(a)), and chapter 449 (except sections 44902, 44903(d), 44904, and 44907-44909) of this title.

## TITLE 49. TRANSPORTATION

### SUBTITLE VII. AVIATION PROGRAMS

#### PART A. AIR COMMERCE AND SAFETY

##### SUBPART IV. ENFORCEMENT AND PENALTIES

##### CHAPTER 465. SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

#### **§ 46505. Carrying a weapon or explosive on an aircraft**

(a) \* \* \*

(d) NONAPPLICATION.—Subsection (b)(1) of this section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the United States Government, authorized to carry arms in an official capacity;

(2) another individual the Administrator of the Federal Aviation Administration or the [Under Secretary of Transportation for Security] Administrator of the Transportation Security Administration by regulation authorizes to carry a dangerous weapon in air transportation or intrastate air transportation; or

(3) an individual transporting a weapon (except a loaded firearm) in baggage not accessible to a passenger in flight if the air carrier was informed of the presence of the weapon.

(e) CONSPIRACY.—If two or more persons conspire to violate subsection (b) or (c), and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in such subsection.

## TITLE 49. TRANSPORTATION

### SUBTITLE VII. AVIATION PROGRAMS

#### PART C. FINANCING

##### CHAPTER 483. AVIATION SECURITY FUNDING

#### **[§ 48301. Aviation security funding**

[(a) IN GENERAL.—There are authorized to be appropriated for fiscal years 2002, 2003, 2004, 2005, 2007, 2008, 2009, 2010, and

2011 such sums as may be necessary to carry out chapter 449 and related aviation security activities under this title. Any amounts appropriated pursuant to this section for fiscal year 2002 shall remain available until expended.

[(b) GRANTS FOR AIRCRAFT SECURITY.—There is authorized to be appropriated \$500,000,000 for fiscal year 2002 to the Secretary of Transportation to make grants to or other agreements with air carriers (including intrastate air carriers) to—

[(1) fortify cockpit doors to deny access from the cabin to the pilots in the cockpit;

[(2) provide for the use of video monitors or other devices to alert the cockpit crew to activity in the passenger cabin;

[(3) ensure continuous operation of the aircraft transponder in the event the crew faces an emergency; and

[(4) provide for the use of other innovative technologies to enhance aircraft security]

## HOMELAND SECURITY ACT OF 2002

[6 U.S.C. 101 et seq.]

### SEC. 1611. 5-YEAR TECHNOLOGY INVESTMENT PLAN.

(a) \* \* \*

(b) UPDATE AND REPORT.—[Beginning 2 years after the date the Plan is submitted to Congress under subsection (a), and biennially thereafter, the Administrator shall submit to Congress—] *The Administrator shall, in collaboration with relevant industry and government stakeholders, annually submit to Congress in an appendix to the budget request and publish in an unclassified format in the public domain—*

(1) an update of the Plan[; and];

(2) a report on the extent to which each security-related technology acquired by the Administration since the last issuance or update of the Plan is consistent with the planned technology programs and projects identified under subsection (d)(2) for that security-related technology[.]; and

(3) *information about acquisitions completed during the fiscal year preceding the fiscal year during which the report is submitted.*

## IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION ACT OF 2007

[Public Law 110–53; 121 Stat. 266]

### SEC. 1307. NATIONAL EXPLOSIVES DETECTION CANINE TEAM TRAINING PROGRAM.

(a) \* \* \*

(g) AUTHORIZATION.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section for fiscal years 2007 through 2011.

(h) *THIRD PARTY CANINE TEAMS FOR AIR CARGO SECURITY.—*

(1) *IN GENERAL.—In order to enhance the screening of air cargo and ensure that third party explosives detection canine assets are leveraged for such purpose, the Administrator shall, not later than 180 days after the date of enactment of the TSA Modernization Act—*

(A) develop and issue standards for the use of such third party explosives detection canine assets for the primary screening of air cargo;

(B) develop a process to identify qualified non-Federal entities that will certify canine assets that meet the standards established by the Administrator under subparagraph (A);

(C) ensure that entities qualified to certify canine assets shall be independent from entities that will train and provide canines to end users of such canine assets;

(D) establish a system of Transportation Security Administration audits of the process developed under subparagraph (B); and

(E) provide that canines certified for the primary screening of air cargo can be used by air carriers, foreign air carriers, freight forwarders, and shippers.

(2) **IMPLEMENTATION.**—Beginning on the date that the development of the process under paragraph (1)(B) is complete, the Administrator shall—

(A) facilitate the deployment of such assets that meet the certification standards of the Administration, as determined by the Administrator;

(B) make such standards available to vendors seeking to train and deploy third party explosives detection canine assets; and

(C) ensure that all costs for the training and certification of canines, and for the use of supplied canines, are borne by private industry and not the Federal Government.

(3) **DEFINITIONS.**—In this subsection:

(A) **AIR CARRIER.**—The term “air carrier” has the meaning given the term in section 40102 of title 49, United States Code.

(B) **FOREIGN AIR CARRIER.**—The term “foreign air carrier” has the meaning given the term in section 40102 of title 49, United States Code.

(C) **THIRD PARTY EXPLOSIVES DETECTION CANINE ASSET.**—The term “third party explosives detection canine asset” means any explosives detection canine or handler not owned or employed, respectively, by the Transportation Security Administration.

## AVIATION AND TRANSPORTATION SECURITY ACT

[Public Law 107–71; 115 Stat. 602]

### SEC. 101. UNDER SECRETARY OF TRANSPORTATION FOR SECURITY; BONUS ELIGIBILITY.

[5 U.S.C. 5313 note]

(a) \* \* \*

(c) **POSITION OF UNDER SECRETARY IN EXECUTIVE SCHEDULE.**—

(1) **IN GENERAL.**—\* \* \*

(2) **BONUS ELIGIBILITY.**—In addition to the annual rate of pay authorized by section 5313 of title 5, United States Code, the **Under Secretary** Administrator of the Transportation Security Administration may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of pay, based on

the [Secretary's] *Secretary of Homeland Security's* evaluation of the [Under Secretary's] *Administrator's* performance.  
(d) \* \* \*

## INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

[Public Law 108–458; 118 Stat. 3638]

### SEC. 4016. FEDERAL AIR MARSHALS.

[49 U.S.C. 44917 note]

(a) **FEDERAL AIR MARSHAL ANONYMITY.**—The Director of the Federal Air Marshal Service of the Department of Homeland Security shall continue operational initiatives to protect the anonymity of Federal air marshals.

(b) **AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Bureau of Immigration and Customs Enforcement, in addition to any amounts otherwise authorized by law, for the deployment of Federal air marshals under section 44917 of title 49, United States Code, \$83,000,000 for the 3 fiscal-year period beginning with fiscal year 2005. Such sums shall remain available until expended.

(c) **FEDERAL LAW ENFORCEMENT COUNTERTERRORISM TRAINING.**—

(1) **AVAILABILITY OF INFORMATION.**—The [Assistant Secretary for Immigration and Customs Enforcement] *Administrator of the Transportation Security Administration* and the Director of Federal Air Marshal Service of the Department of Homeland Security, shall make available, as practicable, appropriate information on in-flight counterterrorism and weapons handling procedures and tactics training to Federal law enforcement officers who fly while in possession of a firearm.

(2) **IDENTIFICATION OF FRAUDULENT DOCUMENTS.**—The [Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, in coordination with the Assistant Secretary of Homeland Security (Transportation Security Administration),] *Administrator of the Transportation Security Administration and the Director of Federal Air Marshal Service of the Department of Homeland Security* shall ensure that Transportation Security Administration screeners and Federal air marshals receive training in identifying fraudulent identification documents, including fraudulent or expired visas and passports. Such training shall also be made available to other Federal law enforcement agencies and local law enforcement agencies located in a State that borders Canada or Mexico.

## FAA EXTENSION, SAFETY, AND SECURITY ACT OF 2016

[Public Law 114–190; 130 Stat. 615]

### [SEC. 3101. PRECHECK PROGRAM AUTHORIZATION.

[The Administrator shall continue to administer the PreCheck Program.]

### [SEC. 3102. PRECHECK PROGRAM ENROLLMENT EXPANSION.

[(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Administrator shall publish PreCheck Pro-

gram enrollment standards that add multiple private sector application capabilities for the PreCheck Program to increase the public's enrollment access to the program, including standards that allow the use of secure technologies, including online enrollment, kiosks, tablets, or staffed laptop stations at which individuals can apply for entry into the program.

[(b) REQUIREMENTS.—Upon publication of the PreCheck Program enrollment standards under subsection (a), the Administrator shall—

[(1) coordinate with interested parties—

[(A) to deploy TSA-approved ready-to-market private sector solutions that meet the PreCheck Program enrollment standards under such subsection;

[(B) to make available additional PreCheck Program enrollment capabilities; and

[(C) to offer secure online and mobile enrollment opportunities;

[(2) partner with the private sector to collect biographic and biometric identification information via kiosks, mobile devices, or other mobile enrollment platforms to increase enrollment flexibility and minimize the amount of travel to enrollment centers for applicants;

[(3) ensure that any information, including biographic information, is collected in a manner that—

[(A) is comparable with the appropriate and applicable standards developed by the National Institute of Standards and Technology; and

[(B) protects privacy and data security, including that any personally identifiable information is collected, retained, used, and shared in a manner consistent with section 552a of title 5, United States Code (commonly known as “Privacy Act of 1974”), and with agency regulations;

[(4) ensure that the enrollment process is streamlined and flexible to allow an individual to provide additional information to complete enrollment and verify identity;

[(5) ensure that any enrollment expansion using a private sector risk assessment instead of a fingerprint-based criminal history records check is evaluated and certified by the Secretary of Homeland Security, and verified by the Government Accountability Office or a Federally funded research and development center after award to be equivalent to a fingerprint-based criminal history records check conducted through the Federal Bureau of Investigation with respect to the effectiveness of identifying individuals who are not qualified to participate in the PreCheck Program due to disqualifying criminal history; and

[(6) ensure that the Secretary has certified that reasonable procedures are in place with regard to the accuracy, relevancy, and proper utilization of information employed in private sector risk assessments.

[(c) MARKETING OF PRECHECK PROGRAM.—Upon publication of PreCheck Program enrollment standards under subsection (a), the Administrator shall—

[(1) in accordance with such standards, develop and implement—

[(A) a continual process, including an associated time-frame, for approving private sector marketing of the PreCheck Program; and

[(B) a long-term strategy for partnering with the private sector to encourage enrollment in such program;

[(2) submit to Congress, at the end of each fiscal year, a report on any PreCheck Program application fees collected in excess of the costs of administering the program, including to assess the feasibility of the program, for such fiscal year, and recommendations for using such fees to support marketing of the program.

[(d) IDENTITY VERIFICATION ENHANCEMENT.—Not later than 120 days after the date of enactment of this Act, the Administrator shall—

[(1) coordinate with the heads of appropriate components of the Department to leverage Department-held data and technologies to verify the citizenship of individuals enrolling in the PreCheck Program;

[(2) partner with the private sector to use biometrics and authentication standards, such as relevant standards developed by the National Institute of Standards and Technology, to facilitate enrollment in the program; and

[(3) consider leveraging the existing resources and abilities of airports to conduct fingerprint and background checks to expedite identity verification.

[(e) PRECHECK PROGRAM LANES OPERATION.—The Administrator shall—

[(1) ensure that PreCheck Program screening lanes are open and available during peak and high-volume travel times at appropriate airports to individuals enrolled in the PreCheck Program; and

[(2) make every practicable effort to provide expedited screening at standard screening lanes during times when PreCheck Program screening lanes are closed to individuals enrolled in the program in order to maintain operational efficiency.

[(f) VETTING FOR PRECHECK PROGRAM PARTICIPANTS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall initiate an assessment to identify any security vulnerabilities in the vetting process for the PreCheck Program, including determining whether subjecting PreCheck Program participants to recurrent fingerprint-based criminal history records checks, in addition to recurrent checks against the terrorist watchlist, could be done in a cost-effective manner to strengthen the security of the PreCheck Program.]

## AVIATION SECURITY ACT OF 2016

[49 U.S.C. 44901 note]

### [SEC. 3204. DONATION OF SCREENING EQUIPMENT TO PROTECT THE UNITED STATES.

[49 U.S.C. 44901 note]

[(a) IN GENERAL.—The Administrator is authorized to donate security screening equipment to a foreign last point of departure airport operator if such equipment can be reasonably expected to miti-

gate a specific vulnerability to the security of the United States or United States citizens.

[(b) REPORT.—Not later than 30 days before any donation of security screening equipment pursuant to subsection (a), the Administrator shall provide to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate a detailed written explanation of the following:

[(1) The specific vulnerability to the United States or United States citizens that will be mitigated by such donation.

[(2) An explanation as to why the recipient of such donation is unable or unwilling to purchase security screening equipment to mitigate such vulnerability.

[(3) An evacuation plan for sensitive technologies in case of emergency or instability in the country to which such donation is being made.

[(4) How the Administrator will ensure the security screening equipment that is being donated is used and maintained over the course of its life by the recipient.

[(5) The total dollar value of such donation.]

